Multnomah County Oregon

Board of Commissioners & Agenda

connecting citizens with information and services

BOARD OF COMMISSIONERS

Ted Wheeler, Chair
501 SE Hawthorne Boulevard, Suite 600
Portland, Or 97214
Phone: (503) 988-3308 FAX (503) 988-3093
Email: mult.chair@co.multnomah.or.us

Deborah Kafoury, Commission Dist. 1
501 SE Hawthorne Boulevard, Suite 600
Portland, Or 97214
Phone: (503) 988-5220 FAX (503) 988-5440
Email: district1@co.multnomah.or.us

Jeff Cogen, Commission Dist. 2
501 SE Hawthorne Boulevard, Suite 600
Portland, Or 97214
Phone: (503) 988-5219 FAX (503) 988-5440
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Judy Shiprack, Commission Dist. 3
501 SE Hawthorne Boulevard, Suite 600
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Diane McKeel, Commission Dist. 4
501 SE Hawthorne Boulevard, Suite 600
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Email: district4@co.multnomah.or.us

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JANUARY 19 & 21, 2010
BOARD MEETINGS
FASTLOOK AGENDA ITEMS

Pg 2	9:00 a.m. Tuesday Executive Session
Pg 3	10:00 a.m. – Tuesday Briefing - Safe and Equitable Foster Care Reduction Initiative
Pg 3	9:30 a.m. Thursday Opportunity for Public Comment on Non-Agenda Matters
Pg 3	9:30 a.m. Thursday – R-1 Resolution Adopting Revised Multnomah County Public Contract Review Board Rules Effective January 21, 2010
Pg 4	9:30 a.m. Thursday – R-2 Resolution Approving an Exemption to Increase the Contract Amount with Gibson Builders LLC for Inverness Jail Dorm Shower Water Proofing Project
Pg 4	9:30 a.m. Thursday – R-3 First Reading of a Proposed Ordinance Amending the Sauvie Island/Multnomah Channel Rural Area Plan Map to Note Exceptions to State Land Use Goals
Pg 4	9:30 a.m. Thursday – R-5 Budget Modification MCSO-02 Amending the TriMet Contract, an Intergovernmental Agreement, and Appropriating an Additional $282,046 and 2.00 FTEs in the Justice Services Special Operations Fund

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Produced through MetroEast Community Media
(503) 667-8848, ext. 332 for further info
or: http://www.metroeast.org

Tuesday, January 19, 2010 - **9:00 AM**
Multnomah Building, Sixth Floor Commissioners Conference Room 635
501 SE Hawthorne Boulevard, Portland

EXECUTIVE SESSION

E-1 IF NEEDED The Multnomah County Board of Commissioners will meet in Executive Session pursuant to ORS 192.660(2) (d)(e) and/or (h). Only representatives of the news media and designated staff may attend. News media and all other attendees are specifically directed not to disclose information that is the subject of the Executive Session. Final decisions are decided in public Board meetings. Presented by County Attorney Agnes Sowle. 15-55 MINUTES REQUESTED.

Tuesday, January 19, 2010 - **10:00 AM**
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

BOARD BRIEFINGS

B-1 Safe and Equitable Foster Care Reduction Initiative. Requested by Commissioner Deborah Kafoury and Joshua Todd, CCFC Director
(1 hour requested)

Thursday, January 21, 2010 - **9:30 AM**
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

REGULAR MEETING

CONSENT CALENDAR - 9:30 AM

C-1 BUDGET MODIFICATION DCS-04 Reclassifying a Position in the Animal Services Program as Determined by the Class/Comp Unit of Central Human Resources

C-2 Intergovernmental Revenue Agreement 0910093 with the Oregon Department of Transportation for the Multnomah County Overlays Project Utilizing Funds from the American Recovery and Reinvestment Act of 2009

C-3 Intergovernmental Revenue Agreement 0910092 with the City of Gresham for the Design and Construction of Asphalt Overlays upon City Roads in Conjunction with a Multnomah County Overlay Project Utilizing Funds from the American Recovery and Reinvestment Act of 2009

REGULAR AGENDA

PUBLIC COMMENT - 9:30 AM

Opportunity for Public Comment on non-agenda matters. Testimony limited to three minutes per person unless otherwise designated by the presiding officer. This is a time for the Board to hear public testimony, not the time for Board deliberation. Fill out a yellow speaker form available at the back of the Boardroom and turn it in to the Board Clerk. Persons will be called in the order the forms are submitted, unless otherwise recognized by the presiding officer.

DEPARTMENT OF COUNTY MANAGEMENT – 9:30 AM

R-1 RESOLUTION Adopting Revised Multnomah County Public Contract Review Board Rules Effective January 21, 2010

PUBLIC CONTRACT REVIEW BOARD – 9:35 A.M.

(Recess as the Board of County Commissioners and convene as the governing body for PUBLIC CONTRACT REVIEW BOARD)

R-2 RESOLUTION Approving an Exemption to Increase the Contract Amount with Gibson Builders LLC for Inverness Jail Dorm Shower Water Proofing Project

(Adjourn as the governing body for Public Contract Review Board and reconvene as BOARD OF COUNTY COMMISSIONERS)

DEPARTMENT OF COMMUNITY SERVICES – 9:40 AM

R-3 First Reading of a Proposed ORDINANCE Amending the Sauvie Island/Multnomah Channel Rural Area Plan Map to Note Exceptions to State Land Use Goals

DEPARTMENT OF COUNTY HUMAN SERVICES – 10:00 AM

R-4 BUDGET MODIFICATION DCHS-23 Increasing Mental Health and Addiction Services Division Federal/State Appropriation by $4,525,523 in the State Mental Health Grant, $17,978 Beer and Wine Tax Revenue and $58,871 in Community Oriented Policing Services (COPS) Grant Funding

SHERIFF'S OFFICE – 10:05 AM

R-5 BUDGET MODIFICATION MCSO-02 Amending the TriMet Contract, an Intergovernmental Agreement, and Appropriating an Additional $282,046 and 2.00 FTE in the Justice Services Special Operations Fund

BOARD COMMENT – 10:10 AM

Opportunity (as time allows) for Commissioners to provide informational comments to Board and public on non-agenda items of interest or to discuss legislative issues.

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YES

Tuesday, January 19, 2010 - **10:00 AM**
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B-1 Safe and Equitable Foster Care Reduction Initiative. Requested by Commissioner Deborah Kafoury and Joshua Todd, CCFC Director
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file

Thursday, January 21, 2010 - **9:30 AM**
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(007)

DEPARTMENT OF COUNTY MANAGEMENT – 9:30 AM

R-1 RESOLUTION Adopting Revised Multnomah County Public Contract Review Board Rules Effective January 21, 2010 2010-007

PUBLIC CONTRACT REVIEW BOARD – 9:35 A.M.

(Recess as the Board of County Commissioners and convene as the governing body for PUBLIC CONTRACT REVIEW BOARD)

R-2 RESOLUTION Approving an Exemption to Increase the Contract Amount with Gibson Builders LLC for Inverness Jail Dorm Shower Water Proofing Project

2010-010

(Adjourn as the governing body for Public Contract Review Board and reconvene as BOARD OF COUNTY COMMISSIONERS)

DEPARTMENT OF COMMUNITY SERVICES – 9:40 AM

R-3 First Reading of a Proposed ORDINANCE Amending the Sauvie Island/Multnomah Channel Rural Area Plan Map to Note Exceptions to State Land Use Goals TESTIMONY ONLY 1ST READ 1/28/2010

DEPARTMENT OF COUNTY HUMAN SERVICES – 10:00 AM

R-4 BUDGET MODIFICATION DCHS-23 Increasing Mental Health and Addiction Services Division Federal/State Appropriation by $4,525,523 in the State Mental Health Grant, $17,978 Beer and Wine Tax Revenue and $58,871 in Community Oriented Policing Services (COPS) Grant Funding

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BOARD COMMENT – 10:10 AM

Opportunity (as time allows) for Commissioners to provide informational comments to Board and public on non-agenda items of interest or to discuss legislative issues.

MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (revised 09/22/08)

Board Clerk Use Only	
Meeting Date:	01/12/2010
Agenda Item #:	E-1
Est. Start Time:	9:00 AM
Date Submitted:	01/07/2010

Agenda Title: **Executive Session Pursuant to ORS 192.660(2)(d),(e)and/or(h)**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date:	January 12, 2010	**Amount of Time Needed:**	5-55 mins
Department:	Non-Departmental	**Division:**	County Attorney
Contact(s):	Agnes Sowle		
Phone:	503 988-3138 **Ext.** 83138	**I/O Address:**	503/500
Presenter(s):	Agnes Sowle and Invited Others		

General Information

1. **What action are you requesting from the Board?**
   No final decision will be made in the Executive Session.
2. **Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**
   Only representatives of the news media and designated staff are allowed to attend. Representatives of the news media and all other attendees are specifically directed not to disclose information that is the subject of the Executive Session.
3. **Explain the fiscal impact (current year and ongoing).**
4. **Explain any legal and/or policy issues involved.**
   ORS 192.660(2)(d),(e)and/or(h)
5. **Explain any citizen and/or other government participation that has or will take place.**

Required Signature

Elected Official or Department/ Agency Director: _____ **Date:** **01/07/2010**

MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (revised 09/22/08)

APPROVED: MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-1 DATE 01/14/2010
LYNDA GROW, BOARD CLERK

Board Clerk Use Only

Meeting Date:	01/14/2010
Agenda Item #:	C-1
Est. Start Time:	9:30 AM
Date Submitted:	12/30/09

Agenda Title: **Amendment 1 to Intergovernmental Revenue Agreement 0809195 with the Oregon Department of Transportation for Halsey Street and Stark Street Sidewalks in Multnomah County, Utilizing Funds from the American Recovery and Reinvestment Act (ARRA) of 2009**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title sufficient to describe the action requested.

Requested Meeting Date:	January 14, 2010	**Amount of Time Needed:**	Consent Calendar
Department:	Community Services	**Division:**	Land Use & Trans Program
Contact(s):	Brian Vincent, PE, County Engineer		
Phone:	(503) 988-5050 **Ext.** 29642	**I/O Address:**	#425/2nd Floor
Presenter(s):	Brian Vincent, PE, County Engineer		

General Information

1. What action are you requesting from the Board?

The Department of Community Services' Land Use and Transportation Program requests approval of an amendment to an Intergovernmental Agreement with Oregon Dept. of Transportation (ODOT) for Halsey Street and Stark Street Sidewalk Improvements in Multnomah County utilizing funds from the American Recovery and Reinvestment Act (ARRA) of 2009.

2. **Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

Upon bid opening and subsequent contract award for this project, the County was left with approximately $580,000 of unneeded ARRA funding. Transportation staff quickly developed and submitted another qualifying project (Asphalt Overlays) to utilize this $580,000. This amendment transfers the $580,000 from this sidewalk project to the asphalt overlay project.

3. Explain the fiscal impact (current year and ongoing).

No impact. ARRA funds will fully compensate costs associated with this work.

4. **Explain any legal and/or policy issues involved.**

   None

5. **Explain any citizen and/or other government participation that has or will take place.**

   None required. There is no change to the project scope as it was reviewed and approved for selection via the East Multnomah County Transportation Committee (EMCTC), of which Multnomah County is a member.

Required Signature

Elected Official or Department/ Agency Director: **Date: 12/30/09**

Jerry Elliot

MULTNOMAH COUNTY CONTRACT APPROVAL FORM (CAF)

Contract #: 0809195

Pre-approved Contract Boilerplate (with County Attorney signature) ☒Attached ☐Not Attached Amendment #: 1

CLASS I Based on Informal / Intermediate Procurement	CLASS II Based on Formal Procurement	CLASS III Intergovernmental Contract (IGA)
☐ Personal Services Contract	☐ Personal Services Contract	☐ Expenditure Contract ☒ Revenue Contract ☐ Grant Contract ☐ Non-Financial Agreement
PCRB Contract ☐ Goods or Services ☐ Maintenance or Licensing Agreement ☐ Public Works / Construction Contract ☐ Architectural & Engineering Contract	PCRB Contract ☐ Goods or Services ☐ Maintenance or Licensing Agreement ☐ Public Works / Construction Contract ☐ Architectural & Engineering Contract	
☐ Revenue Contract ☐ Grant Contract ☐ Non-Financial Agreement	☐ Revenue Contract ☐ Grant Contract ☐ Non-Financial Agreement	☐ **INTER-DEPARTMENTAL AGREEMENT (IDA)**

Department:: Community Services Division/ Program: Land Use & Transportation Program Date: 12/23/09
Originator: Brian Vincent, County Engineer Phone: (503) 988-5050 x29642 Bldg/Room: #425/Yeon
Contact: Cathey Kramer Phone: (503) 988-5050 x22589 Bldg/Room: #425/Yeon

Description of Contract: Amendment No. 1 to Intergovernmental Agreement No. 25499 with Oregon Dept. of Transportation (ODOT) for NE Halsey Street and SE Stark Street Sidewalks in Multnomah County, utilizing funds from the American Recovery and Reinvestment Act of 2009. Revenue IGA. The Amendment reflects a reduction in the total ARRA funding for the project.

RENEWAL: ☐ PREVIOUS CONTRACT #(S) ____ EEO CERTIFICATION EXPIRES ____

PROCUREMENT EXEMPTION OR CITATION # ____ ISSUE DATE: ____ EFFECTIVE DATE: ____ END DATE: ____

CONTRACTOR IS: ☐ MBE ☐ WBE ☐ ESB ☐ QRF State Cert# ____ or ☐ Self Cert ☐ Non-Profit ☐ N/A *(Check all boxes that apply)*

Contractor	Oregon Dept. of Transportation			Remittance address *(If different)*	
Address	123 NW Flanders St.				
City/State	Portland OR			Payment Schedule / Terms:	
ZIP Code	97209-4037			☐ Lump Sum $	☐ Due on Receipt
Phone	(503) 731-8238 (Tom Weatherford)			☐ Monthly $	☐ Net 30
Employer ID# or SS#	N/A			☒ Other $ Per Invoice	☐ Other
Contract Effective Date	01/01/2010	Term Date	09/30/2015	☐ Price Agreement (PA) or Requirements Funding Info:	
Amendment Effect Date		New Term Date			
Original Contract Amount	$ 1,000,000.00 (Estimated)			Original PA/Requirements Amount	$
Total Amt of Previous Amendments	$ 0			Total Amt of Previous Amendments	$
Amount of Amendment	$ (580,000.00)			Amount of Amendment	$
Total Amount of Agreement $	$ 417,440.00 (Estimated)			Total PA/Requirements Amount	$

REQUIRED SIGNATURES:

Department Manager _____ DATE 12/30/09
County Attorney /s/ Matthew O. Ryan DATE 11/12/09
CPCA Manager N/A DATE
County Chair _____ DATE 01/14/2010
Sheriff _____ DATE
Contract Administration N/A DATE

APPROVED: MULTNOMAH COUNTY BOARD OF COMMISSIONERS
AGENDA # C-1 DATE 01/14/2010
DEBORAH L. BOGSTAD, BOARD CLERK

COMMENTS: (WBS: BIKESWA4299 & BIKESWA4399)

-----Original Message-----
From: RYAN Matthew O
Sent: Wednesday, November 11, 2009 9:50 AM
To: VINCENT Brian S
Cc: KRAMER Cathey M
Subject: FW: 25499-01_MultnomahCo_ARRA_Halsey.doc
Importance: High

Brian, the attached IGA Amendment has been reviewed and is approved for submission to the BCC for its consideration. Thanks.

Matthew O. Ryan
Assistant County Attorney
Office of Multnomah County Attorney
501 SE Hawthorne Blvd, Suite 500
Portland, Oregon 97214
Tel: 503-988-3138; Fax: 503-988-3377
matthew.o.ryan@co.multnomah.or.us
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From: VINCENT Brian S
Sent: Tuesday, November 10, 2009 3:11 PM
To: RYAN Matthew O
Subject: FW: 25499-01_MultnomahCo_ARRA_Halsey.doc
Importance: High

Matt

I would like to send this back with our approval. Any concerns?

All these documents are inter-related and ultimately will cost of reimbursement $$ the longer we wait.
Brian

Matt

Can you please look at this IGA amendment?

Basic premise is to move $$ form the ARRA sidewalk project to the ARRA paving project (the draft IGA which I forwarded the other day)

-----Original Message-----
From: WEATHERFORD Thomas L [mailto:Thomas.L.WEATHERFORD@odot.state.or.us]
Sent: Friday, November 06, 2009 4:55 PM
To: VINCENT Brian S; SOPLOP Adam; Bilyeu, Don; mccoy@ci.gresham.or.us; Shelley, Jeff; Coolidge, Trevor
Cc: REDDEN Julie K; LEE Penelope A * Penny
Subject: FW: 25499-01_MultnomahCo_ARRA_Halsey.doc

Brian,

Attached below is a draft copy of the ARRA project agreement amendment for Multnomah County's HALSEY ST & STARK ST SIDEWALKS (MULTNOMAH CO), Key #16458, project. This amendment moves ARRA funding to MULTNOMAH COUNTY STREET OVERLAYS project, Key #16943.

Please have County staff and legal counsel review and let us know by return email whether the County has any questions, comments, or suggested changes. It is important to reply by email even should you have no comment as we will take no further action until we hear from you in writing.

I have copied Gresham staff for their information.
Please do NOT sign this version. It must still go to ODOT and DOJ Salem for review after our local review. ODOT will prepare final agreement bluebacks with routing instructions to submit to the County once we agree upon a final signature version.

Please reply directly to Julie Redden above, Local Government Section, and copy me.
You should have already received a draft or an informational copy of the associated ARRA agreement/agreement amendment for Multnomah County's MULTNOMAH COUNTY STREET OVERLAYS project, Key #16943, and Gresham's 242ND/HOGAN RD: GLISAN ST-STARK ST WIDENING project, Key #16455.

Tom Weatherford
ODOT Region 1 Local Agency Liaison
123 NW Flanders St.
Portland, Oregon 97209-4037

tel: 503-731-8238
fax: 503-731-8215
email: thomas.l.weatherford@odot.state.or.us

From: REDDEN Julie K
Sent: Friday, November 06, 2009 9:03 AM
To: WEATHERFORD Thomas L
Cc: REDDEN Julie K
Subject: 25499-01_MultnomahCo_ARRA_Halsey.doc

<<25499-01_MultnomahCo_ARRA_Halsey.doc>> Here is the draft with the changes added to the second paragraph, which indicates where the money is going.

Julie Redden, Policy Analyst
Local Government Section
Oregon Department of Transportation
355 Capitol Street NE, Room 326
Salem, OR 97301-3871
Phone: (503)986-3153
FAX: (503)986-3290

Misc. Contracts and Agreements
No.25,499

AMENDMENT NUMBER 01
American Recovery and Reinvestment Act of 2009
Halsey Street Sidewalks
Multnomah County

The State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "State," and the Multnomah County, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on April 21, 2009. Said Agreement covers sidewalk construction.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to reduce the total ARRA funding by $580,000. The $580,000 will be applied to Multnomah County's contingency project, Multnomah County Streets Overlay project, Agreement No. 26312. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

TERMS OF AGREEMENT, Paragraph 2, Page 2, which reads:

2. The Project shall be conducted as a part of the ARRA Program under Title 23, United States Code. The total Project cost is estimated at $1,000,000, which is subject to change. ARRA Program funds for this Project shall be limited to $989,960. The Project will be financed with ARRA funds at 100 percent of the maximum allowable federal participating amount. Agency will not be required to provide a match for the ARRA funds but will be responsible for any non-participating costs, including all costs in excess of the available federal funds. No ARRA funded invoices will be accepted and no ARRA funded payments will be made after September 30, 2015.

Shall be deleted in its entirety and replaced with the following:

2. The Project shall be conducted as a part of the ARRA Program under Title 23, United States Code. The total Project cost is estimated at $417,440, which is subject to change. ARRA Program funds for this Project shall be limited to $409,960. The Project will be financed with ARRA funds at 100 percent of the maximum allowable federal participating amount. Agency will not be required to provide a match for the ARRA funds but will be responsible for any non-participating costs, including all costs in excess of the available federal funds. No ARRA funded invoices will be accepted and no ARRA funded payments will be made after September 30, 2015.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

This Project is amended into the 2008-2011 Statewide Transportation Improvement Program, Key No. 16458 that was approved by the Oregon Transportation Commission on November 14, 2007 or will subsequently be approved by amendment to the STIP.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways, to approve and sign agreements over $75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

Agency/State
Agreement No. 25499-Amendment 1

Multnomah County, by and through its elected officials

By _____
Ted Wheeler, Chair
Date JANUARY 14, 2010

By ------

Date ------

APPROVED AS TO LEGAL SUFFICIENCY

By /s/ Matthew O. Ryan
Agency Counsel Assistant County Attorney
Date 11/12/09

Agency Contact:
Brian S. Vincent, PE, CountyEngineer
1620 SE 190th Ave.
Portland, OR 97233
Brian.s.vincent@co.multnomah.or.us
(503) 988.5050 ext 29642

State Contact:
Tom Weatherford, ODOT Region 1
123 NW Flanders Street
Portland, OR, 97209-4012
Thomas.L.WEATHERFORD@odot.state.or.us
503.731.8238

STATE OF OREGON, by and through its Department of Transportation

By _____
Deputy Director, Highways

Date _____

APPROVAL RECOMMENDED

By _____
Local Government Section Manager

Date _____

By _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date: _____

APPROVED: MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-1 DATE 01/14/2010
DEBORAH L. BOGSTAD, BOARD CLERK

Draft Briefing Schedule

1/19/2010

Date/ Estimated Time	Topic	Presenter/ Responsible Person	Notes
Tues, 2/2/10			
Tues, 2/9/10			•
Thurs, 2/11/10 1.5 hours	Capital – Roads & Bridges (extended CIP Briefing)	Cecilia Johnson – DCS Kim Peoples – Transportation Ian Cannon - Bridges	• What are the road and bridge capital needs and anticipated funding? • Given the long-term structural deficit in roads and bridges, what are our options? Funding options and ownership options? • What is the longer term financial plan?
Tues, 2/16/10 2 Hours	Crisis Assessment & Treatment Center	Joanne Fuller, DCHS Ed Blackburn – Central City Concern	• What is the CATC and what will happen here? • How do these services fit with what we are providing today? • What are the capital costs, sources of funding, and timeframe for development? • What is the ongoing funding and how will we fund it? • What have we contributed to the project to date and what are the next steps for development? • Are there other options for providing these services? • Given the mixed use of the site, how is ownership structured?
Tues, 2/23/10 2 hours	Changing Demographics	Joanne Fuller – DCHS Lillian Shirley - DHS	• What is happening to the population in Multnomah County? Where are the needs for our services? • Given the shifts in poverty, what are the implications for service delivery? • How do we make service delivery decisions when shifts occur? • How does the SUN service delivery system inform this discussion? • Given the shifts in poverty, how do we ensure access to healthcare? • How does the shift in poverty compare

			with health disparities? • How do we make service delivery decisions and how do we ensure access and equity? • How do we balance these issues with current service delivery? • How do we work with private providers to ensure access and equity? • What opportunities are on the horizon?
Tues, 3/2/10 2 hours	Grand Jury Report & Response	Lillian Shirley - Health Dan Staton - MCSO Peter Ozanne - LPSCC John Bradley Chuck French DA	• What recommendations were made by the Grand Jury? • On Corrections Health, what are the next steps for evaluating options? • What recommendations are LPSCC planning to evaluate and what are the next steps? • What should go into the cost of a jail bed?
Tues, 3/9/10	None this week		
Tues, 3/16/10	None this week		
Tues, 2/23/10	None this week		
Tues, 3/30/10 45 mins 1 hour, 15 mins	LPSCC Workplan Capital Facilities	Peter Ozanne, LPSCC Bob Thomas, F&PM John Lindenthal, F&PM	• What is LPSCC's FY10 workplan and accomplishments to date? • What is LPSCC's FY11 Workplan? • What is LPSCC's budget detail for FY10 and expenditures to date? • How can we make LPSCC more effective and do we want to integrate LPSCC recommendations on public safety issues that go before the Board?

Tues, 4/6/10
2 hours
	District Attorney Issues	Mike Schrunk - DA	• Issues addressed by the DA including:
			  • Victim Advocates
			  • Prosecution caseload
			  • Child Support Program and ARRA funding
			  • RJNET

Tues, 4/13/10 2 hours	Grand Jury Report Follow up Unfunded Mandates	Scott Taylor – DCJ Dan Staton – MCSO Mike Schrunk – DA Peter Ozanne - LPSCC	• Grand Jury Report Follow up, as needed • What state mandates are we statutorily required to manage but not funded to do? • SB 1145 – what parole/probation programs are funded by the state and what are general fund funded? • What if we just provided the services we

			were funded to provide? What are the implications? • What general funds does that free up? • Mental Health – What changes has Clackamas County made and how has that impacted their mental health service delivery? • Is there another way to provide mental health services? • How will state funds impact CATC?
Tues, 4/20/10 1 hour	Sustainability (Kat out on leave?)	Kat West – DCM Tim Lynch – DCM	• What are we able to accomplish with the current Sustainability department? • What do we need to do to meet current commitments (Climate Action Plan, Food Policy Initiative) • What are the options for meeting those goals? • How do we work with the City of Portland and other sustainability partners and are there options for increased partnership?
Thurs, 4/29/10	Chair's Budget Release		
TBD	Sellwood Bridge Contracting	Cecilia Johnson - DCS	

MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (revised 09/22/08)

APPROVED: MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-1 DATE 01/21/2010
DEBORAH L. BOGSTAD, BOARD CLERK

Board Clerk Use Only	
Meeting Date:	01/21/2010
Agenda Item #:	C-1
Est. Start Time:	9:30 AM
Date Submitted:	12/30/09

BUDGET MODIFICATION: DCS - 04

Agenda Title:	**BUDGET MODIFICATION DCS-04 Reclassifying a Position in the Animal Services Program as Determined by the Class/Comp Unit of Central Human Resources**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title sufficient to describe the action requested.

Requested Meeting Date:	January 21, 2009	**Amount of Time Needed:**	Consent
Department:	Community Services	**Division:**	Animal Services
Contact(s):	Jerry Elliott		
Phone:	(503) 988-4624 **Ext.** 84624	**I/O Address:**	455/2/224
Presenter(s):	N/A		

General Information

1. **What action are you requesting from the Board?**

   The Department is requesting the Board approve a budget modification for the reclassification of a Program Development Specialist position to a Program Communications and Web Specialist position in the Animal Services program as determined by the Class/Comp Unit of Central Human Resources.

2. **Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

   As a result of changing priorities, the Animal Services program revised the job description of a vacant Program Development Specialist position then requested the Class/Comp Unit of Central Human Resource determine the appropriate new classification. It was determine that the correct classification is a Program Communications and Web Specialist. This budget modification will change the budget to implement this reclassification.

3. **Explain the fiscal impact (current year and ongoing).**

   Budget modification detail is attached. Since both the former and current classifications are within

the same pay range, there is no fiscal impact.

4. **Explain any legal and/or policy issues involved.**

   None

5. **Explain any citizen and/or other government participation that has or will take place.**

   N/A

ATTACHMENT A

Budget Modification

If the request is a Budget Modification, please answer all of the following in detail:

- **What revenue is being changed and why?**

  N/A

- **What budgets are increased/decreased?**

  Since both the former and current classifications are within the same pay range, there is no fiscal impact.

- **What do the changes accomplish?**

  This budget modification implements the results of the reclassification request as determined by the Class/Comp unit of Central Human Resources.

- **Do any personnel actions result from this budget modification? Explain.**

  Reclassification of existing position.

- **How will the county indirect, central finance and human resources and departmental overhead costs be covered?**

  There will be no change to these expenses.

- **Is the revenue one-time-only in nature? Will the function be ongoing? What plans are in place to identify a sufficient ongoing funding stream?**

  This change is ongoing, contingent upon Board approval of future program offers related to this program.

- **If a grant, what period does the grant cover?**

  N/A

- **If a grant, when the grant expires, what are funding plans?**

  N/A

NOTE: If a Budget Modification or a Contingency Request attach a Budget Modification Expense & Revenues Worksheet and/or a Budget Modification Personnel Worksheet.

ATTACHMENT B

BUDGET MODIFICATION: DCS - 04

Required Signatures

Elected Official or Department/ Agency Director: M. Cecilia Johnson **Date:** 12/28/09

Budget Analyst: [signature] **Date:** 01/04/2010

Department HR: Jerry D. Petty **Date:** 12/29/09

Countywide HR: Jo E. Ott **Date:** 12/29/09

ANNUALIZED PERSONNEL CHANGE

Change on a full year basis even though this action affects only a part of the fiscal year (FY).

							ANNUALIZED			
Fund	Job #	HR Org	CC/WBS/IO	Position Title	Position Number	FTE	BASE PAY	FRINGE	INSUR	TOTAL
1000	6021	61337	903000	Program Development Spec.	713212	(0.50)	(24,179)	(7,609)	(7,528)	(39,316)
1000	6178	61337	903000	Program Comm. & Web Spec.	713212	0.50	24,179	7,609	7,528	39,316
										0
										0
										0
										0
										0
										0
										0
										0
										0
										0
										0
										0
				TOTAL ANNUALIZED CHANGES		0.00	0	0	0	0

CURRENT YEAR PERSONNEL DOLLAR CHANGE

Calculate costs/savings that will take place in this FY; these should explain the actual dollar amounts being changed by this Bud Mod.

							CURRENT YEAR			
Fund	Job #	HR Org	CC/WBS/IO	Position Title	Position Number	FTE	BASE PAY	FRINGE	INSUR	TOTAL
1000	6021	61337	903000	Program Development Spec.	713212	(0.50)	(24,179)	(7,609)	(7,528)	(39,316)
1000	6178	61337	903000	Program Comm. & Web Spec.	713212	0.50	24,179	7,609	7,528	39,316
										0
										0
										0
										0
										0
										0
										0
										0
										0
										0
										0
										0
				TOTAL CURRENT FY CHANGES		0.00	0	0	0	0

MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (revised 09/22/08)

Board Clerk Use Only	
Meeting Date:	01/21/2010
Agenda Item #:	C-2
Est. Start Time:	9:30 AM
Date Submitted:	01/05/2010

Agenda Title:	**Intergovernmental Revenue Agreement 0910093 with the Oregon Department of Transportation for the Multnomah County Overlays Project Utilizing Funds from the American Recovery and Reinvestment Act of 2009**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title sufficient to describe the action requested.

Requested Meeting Date:	January 21, 2010	**Amount of Time Needed:**	N/A
Department:	Community Services	**Division:**	Land Use & Trans Program
Contact(s):	Brian Vincent, PE, County Engineer		
Phone:	(503) 988-5050 **Ext.** 29642	**I/O Address:**	#425/2nd Floor
Presenter(s):	Consent Calendar		

General Information

1. What action are you requesting from the Board?

The Department of Community Services' Land Use and Transportation Program requests approval of an Intergovernmental Agreement with Oregon Dept. of Transportation (ODOT) for Asphalt Overlays in Multnomah County utilizing funds from the American Recovery and Reinvestment Act of 2009.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

The Department pursued and received ARRA project funding for another project earlier this year (Halsey Street and Stark Street sidewalks). As a result of very favorable bidding, the County had approximately $580,000 of unspent ARRA funding. Department staff developed and received approval for another ARRA project, to apply asphalt overlays on several County roads. This IGA supports that project. At the same time, the City of Gresham also realized favorable bidding on one of their ARRA projects and has approximately $630,000 of unspent ARRA funding. The City requested Department staff to add several sections of City roads to this overlay project so as to achieve contract efficiencies. The City agreed to transfer their $630,000 to this project making the total ARRA funding for this project $1,210,000. City and County have developed, and subject to Board approval, a separate IGA ensuring City's responsibilities are fully funded either from ARRA funding or from other City revenue.

3. **Explain the fiscal impact (current year and ongoing).**

   There is no direct impact. ARRA funds, City funds, or already budgeted County road funds will fully compensate costs associated with this work.

4. **Explain any legal and/or policy issues involved.**

   An IGA between the City of Gresham and County has been written and will come before the Board with an approval request either concurrently or shortly after this IGA.

5. **Explain any citizen and/or other government participation that has or will take place.**

   Notice to public will occur prior to construction activities, tentatively scheduled for late spring 2010.

Required Signature

Elected Official or Department/ Agency Director: M. Cecilia Johnson **Date:** 01/05/2010

MULTNOMAH COUNTY CONTRACT APPROVAL FORM (CAF)

Contract #: 0910093

Pre-approved Contract Boilerplate (with County Attorney signature) ☒Attached ☐Not Attached Amendment #:

CLASS I Based on Informal / Intermediate Procurement	CLASS II Based on Formal Procurement	CLASS III Intergovernmental Contract (IGA)
☐ Personal Services Contract	☐ Personal Services Contract	☐ Expenditure Contract ☒ **Revenue Contract** ☐ Grant Contract ☐ Non-Financial Agreement
PCRB Contract ☐ Goods or Services ☐ Maintenance or Licensing Agreement ☐ Public Works / Construction Contract ☐ Architectural & Engineering Contract	PCRB Contract ☐ Goods or Services ☐ Maintenance or Licensing Agreement ☐ Public Works / Construction Contract ☐ Architectural & Engineering Contract	
☐ Revenue Contract ☐ Grant Contract ☐ Non-Financial Agreement	☐ Revenue Contract ☐ Grant Contract ☐ Non-Financial Agreement	☐ **INTER-DEPARTMENTAL AGREEMENT (IDA)**

Department:: Community Services Division/ Program: Land Use and Trans Program Date: 12/23/09
Originator: Adam Soplop/Brian Vincent Phone: (503) 988-5050 x22604/x29642 Bldg/Room: 425/Yeon
Contact: Cathey Kramer (Administrative) Phone: (503) 988-5050 x22589 Bldg/Room: 425/Yeon

Description of Contract: An Intergovernmental Agreement (IGA) between Multnomah County and Oregon Dept. of Transportation (ODOT) for the Multnomah County Streets Overlay Project, utilizing American Recovery and Reinvestment Act of 2009 (ARRA) funds. ODOT Agreement No. 26,312. This is a Revenue IGA.

RENEWAL: ☐ PREVIOUS CONTRACT #(S) ____ EEO CERTIFICATION EXPIRES ____

PROCUREMENT, EXEMPTION OR CITATION # ____ ____ ____ ISSUE DATE: ____ ____ ____ EFFECTIVE DATE: ____ ____ ____ END DATE: ____ ____ ____

CONTRACTOR IS: ☐ MBE ☐ WBE ☐ ESB ☐ QRF State Cert# ____ or ☐ Self Cert ☐ Non-Profit ☒ N/A *(Check all boxes that apply)*

Contractor	Oregon Dept. of Transportation			Remittance address *(If different)*	
Address	123 NW Flanders St.				
City/State	Portland OR			Payment Schedule / Terms:	
ZIP Code	97209-4037			☐ Lump Sum $	☐ Due on Receipt
Phone	(503) 731-8238 (Tom Weatherford)			☐ Monthly $	☐ Net 30
Employer ID# or SS#	N/A			☒ Other $	☐ Other
Contract Effective Date	01/21/2010	Term Date	01/20/2013	☐ Price Agreement (PA) or Requirements Funding Info:	
Amendment Effect Date		New Term Date			
Original Contract Amount	$			Original PA/Requirements Amount	$
Total Amt of Previous Amendments	$			Total Amt of Previous Amendments	$
Amount of Amendment	$			Amount of Amendment	$
Total Amount of Agreement $	$ 1,820,816.00			Total PA/Requirements Amount	$

REQUIRED SIGNATURES:

Department Manager EE, KP Theresa Johnson DATE 1/5/10
County Attorney /s/ Matthew O. Ryan DATE 12/09/09
CPCA Manager ____ DATE ____
County Chair ____ DATE 01/27/2010
Sheriff ____ DATE ____
Contract Administration ____ DATE ____

COMMENTS: (WBS: ROADEG520)

APPROVED: MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-2 DATE 01/21/2010
DEBORAH L. BOGSTAD, BOARD CLERK

Exhibit A, Rev. 1/17/06 dg

-----Original Message-----
From: RYAN Matthew O
Sent: Wednesday, December 09, 2009 3:33 PM
To: VINCENT Brian S
Cc: PEOPLES Kim E
Subject: FW: Mult Co ARRA 1R Key #16943
Importance: High

Brian,
As we discussed I tweaked this yet again and added language to obligate Gresham to be responsible for post construction obligations.
Also I have reviewed the ODOT IGA and it's approved for submission to the BCC for its consideration. Thanks.

Matthew O. Ryan
Assistant County Attorney
Office of Multnomah County Attorney
501 SE Hawthorne Blvd, Suite 500
Portland, Oregon 97214
Tel: 503-988-3138; Fax: 503-988-3377
matthew.o.ryan@co.multnomah.or.us
CONFIDENTIALITY: This email transmission may contain confidential and privileged information. The information contained herein is intended for the addressee only. If you are not the addressee, please do not review, disclose, copy or distribute this transmission. If you have received this transmission in error, please contact the sender immediately

-----Original Message-----
From: RYAN Matthew O
Sent: Tuesday, December 08, 2009 10:02 AM
To: VINCENT Brian S
Cc: PEOPLES Kim E
Subject: FW: Mult Co ARRA 1R Key #16943
Importance: High

Brian,
Thanks for the heads up about the ARRA allocation and ODOT's control of the funds. I added a section to the Recitals to address the concern I still had about the commitment of the funds. Thanks.

Matthew O. Ryan
Assistant County Attorney
Office of Multnomah County Attorney
501 SE Hawthorne Blvd, Suite 500
Portland, Oregon 97214
Tel: 503-988-3138; Fax: 503-988-3377
matthew.o.ryan@co.multnomah.or.us
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Misc. Contract & Agreement
No. 26312
Cross-Reference No. 25499

LOCAL AGENCY AGREEMENT
American Recovery and Reinvestment Act of 2009
1R-Paving
MULTNOMAH COUNTY STREETS OVERLAY

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its **Department of Transportation**, hereinafter referred to as "State," and **Multnomah County**, acting by and through its elected officials, hereinafter referred to as "Agency," collectively hereinafter referred to as the "Parties.

RECITALS

1. **Halsey Street, Sandy Blvd, and Stark Street** outside of City of Gresham limits are part of the **county road** system under the jurisdiction and control of **Agency**. **Burnside Road, Kane Road/257th Drive, and Eastman Parkway/223rd Avenue within Gresham City Limits** are part of the **City of Gresham road** system under the jurisdiction and control of the **City of Gresham**.

2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

3. The American Recovery and Reinvestment Act of 2009, hereinafter referred to as the "ARRA", provides funding for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization, for fiscal years 2009 and 2010.

4. The ARRA provides each state a sub-allocation of ARRA funds for cities, counties and metropolitan areas.

5. This Project is a contingency ARRA project to be performed by Agency. Said contingency project, is made possible through cost savings from Multnomah County's Halsey Street and Stark Street Sidewalk ARRA project, Agreement No. 25499 ($580,000) and City of Gresham 242nd/Hogan Rd: Glisan St-Stark St Widening ARRA project, Agreement No. 25496 ($630,000). No new ARRA funds are being applied toward the Multnomah County Streets Overlay Project or the City of Gresham Projects.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree to pave various streets or roads as further identified and shown in the description (Exhibit A-1) and map (Exhibit A-2) both attached hereto and by this reference made a part hereof, hereinafter referred to as "Project". The Project will consist of a 2-inch pavement overlay in accordance with 1R Guidelines..

2. The Project shall be conducted as a part of the ARRA Program under Title 23, United States Code. The total Project cost is estimated at $1,881,000, which is subject to change. ARRA Program funds for this Project shall be limited to $1,210,000. The Project will be financed with ARRA funds at 100 percent of the maximum allowable federal participating amount. Agency will not be required to provide a match for the ARRA funds but will be responsible for any non-participating costs, including all costs in excess of the available federal funds. No ARRA funded invoices will be accepted and no ARRA funded payments will be made after September 30, 2015.

3. The federal funding for this Project is contingent upon approval by the FHWA and receipt of federal funds by State. Any work performed prior to "authorization" (also called obligation of funds) by FHWA or outside the scope of work will be considered non-participating and paid for at Agency expense.

4. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.

5. Agency shall place signs that identify Project as "American Recovery and Reinvestment Act of 2009" (State approved design) as described in the ODOT Technical Bulletin TR09-02(B) (or most current version) titled "Project Identification Sign for ODOT Economic Stimulus Projects". Agency may affix additional signage that identifies Agency funds used for the Project.

6. Agency shall report to State the required reporting data by federal and state mandates for delivery of the ARRA program. State shall inform the Agency of the reporting requirements once they have been received from FHWA and the Oregon Department of Administrative Services and such requirements shall be made a part of this Agreement. Agency is also subject to other requirements for use of ARRA, including

but limited to the U.S. Comptroller and Inspector General, and ARRA Sign Requirements provisions.

7. The term of this Agreement will begin upon execution and will terminate upon completion of the Project and final payment or September 30, 2015, whichever is sooner. Any work performed prior to Notice to Proceed from State's Local Agency Liaison will not be reimbursed.

8. This Agreement is contingent upon the execution of the agreement between Multnomah County and the City of Gresham to address the asphalt concrete pavement overlay of the identified streets by Multnomah County. If the agreement between these two parties is not executed by February 1, 2010, this Agreement shall be considered null and void.

9. This Agreement may be terminated by mutual written consent of both Parties.

10. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:

    a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

    b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.

    c. If Agency fails to provide payment of its share of the cost of the Project.

    d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

    e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.

11. Because of the ARRA funding requirements, Agency must advance the Project for obligation of funds prior to March 1, 2010; and State must make a determination no

later than December 31, 2009 whether this date will be met. Therefore, if Agency has not submitted the Project's "Plans, Specifications and Estimates" (PS&E) package to State's Region office by January 11, 2010, the Project will be reviewed by State, in coordination with the Oregon Local Program Committee. If State determines that the ARRA funds will not be, or are unlikely to be, obligated for construction prior to March 1, 2010, State may terminate this Agreement effective upon delivery of written notice to Agency, allowing the funds to be distributed to another project at State's discretion; and State shall have no obligation to replace the ARRA funds with other state or federal funds.

12. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

13. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.

14. Agency, as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires State to return funds to the Federal Highway Administration, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

15. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.

16. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

17. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or

representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

This Project is amended into the 2008-2011 Statewide Transportation Improvement Program, Key No. 16943 that was approved by the Oregon Transportation Commission on November 14, 2007 or will subsequently be approved by amendment to the STIP.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways, to approve and sign agreements over $75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

Agency/State
Agreement No. 26312

MULTNOMAH COUNTY, by and through its elected officials

By _____
Ted Wheeler, County Chair
Date 01/27/2010

By ----
Date ----

APPROVED AS TO LEGAL SUFFICIENCY

By /s/ Matthew O. Ryan
~~Agency Counsel~~ Assistant County Attorney
Date 23/09/2009

Agency Contact:
Agency Contact:
Brian S. Vincent, PE, CountyEngineer
1620 SE 190th Ave.
Portland, OR 97233
Brian.s.vincent@co.multnomah.or.us
(503) 988.5050 ext 29642#

State Contact:
Tom Weatherford, ODOT Region 1
123 NW Flanders Street
Portland, OR, 97209-4012
thomas.l.weatherford@odot.state.or.us
503.731.8238

Multnomah County No. 0910093

APPROVED: MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-2 DATE 01/21/2010
DEBORAH L. BOGSTAD, BOARD CLERK

STATE OF OREGON, by and through its Department of Transportation

By _____
Deputy Director, Highways

Date _____

APPROVAL RECOMMENDED

By _____
Local Government Section Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date: _____

Project Limits

NE Halsey Street beginning at 213th Ave. and ending at 223rd Ave..

NE Halsey Street beginning at 223rd Ave. and ending at NE 238th Drive

NE Halsey Street beginning at 244th Ave. and ending at Historic Columbia River Hwy.

NE Sandy Blvd beginning at NE 203rd Ave. and ending at NE Fairview Parkway

NE Sandy Blvd beginning at NE Fairview Parkway and ending at NE 223rd Ave.

SE Stark Street beginning at NE Troutdale Rd. and ending at SE 32nd Ave.

Burnside Rd beginning at Main Ave. and ending at E. Powell Blvd. (City of Gresham)

Kane/257th beginning at SE Stark St. and ending at NE 17th Dr. (City of Gresham)

Eastman/223rd beginning at SE Stark St. and ending at W. Powell Blvd. (City of Gresham)

Agency/State
Agreement No. 26312

Exhibit A-2
Map

STATE OF OREGON
DEPARTMENT OF TRANSPORTATION

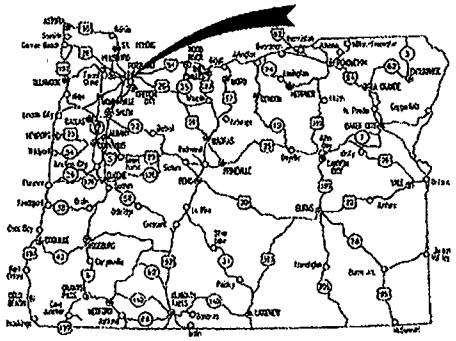
PLANS FOR PROPOSED PROJECT

OVERLAY

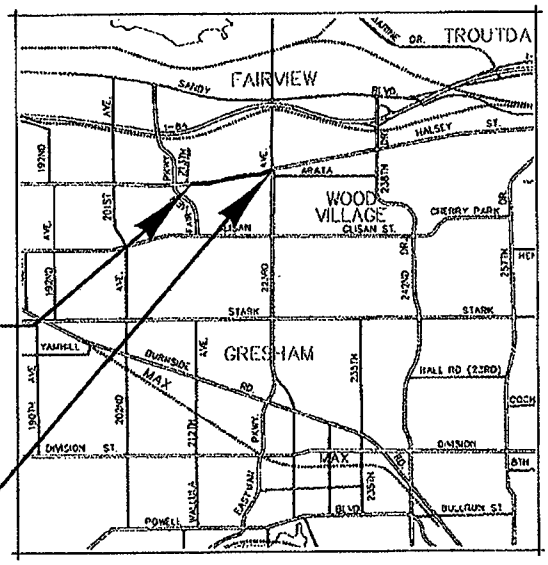
NE 213TH AVE – NE 223RD AVE
NE HALSEY STREET
MULTNOMAH COUNTY
APRIL 2010

MULTNOMAH COUNTY
DEPARTMENT OF COMMUNITY SERVICES
LAND USE AND TRANSPORTATION PROGRAM
1620 S.E. 190th AVE. PORTLAND, ORE. 97233-5910

REGISTERED PROFESSIONAL ENGINEER
81306 PE
OREGON
MAY 13, 2008
ADAM P. SOPLOP
EXP. JUNE 30, 2010



Overall Length Of Project – 0.56 Miles



BEG. OF PROJECT
X-STP-C051(070)
STA. 346+29

END OF PROJECT
X-STP-C051(070)
STA. 375+76

Agency/State
Agreement No. 26312

Exhibit A-2
Map

STATE OF OREGON
DEPARTMENT OF TRANSPORTATION

PLANS FOR PROPOSED PROJECT

OVERLAY

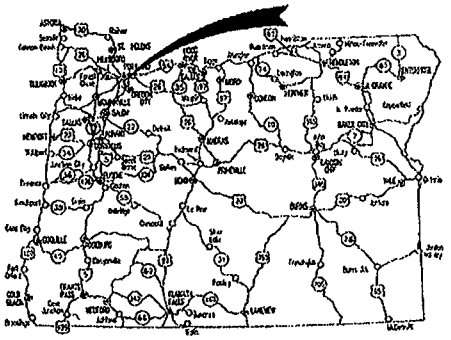
NE 223RD AVE – NE 238TH DRIVE
NE HALSEY STREET
MULTNOMAH COUNTY
APRIL 2010

MULTNOMAH COUNTY
DEPARTMENT OF COMMUNITY SERVICES
LAND USE AND TRANSPORTATION PROGRAM
1620 S.E. 190th AVE. PORTLAND, ORE. 97233-5910

ATTENTION!
Oregon Law Requires You To Follow Rules
Adopted By The Oregon Utility Notification Center.
Those Rules Are Set Forth In OAR 952-001-0010 Through
OAR 952-001-0090. You May Obtain Copies Of The Rules From The Center.
(Notice This Telephone Number For The Oregon Utility Center Is (503) 232-1987.)

LET'S ALL WORK TOGETHER TO MAKE THIS JOB SAFE

REGISTERED PROFESSIONAL ENGINEER
81306 PE
OREGON
MAY 13, 2008
ADAM P. SOPLOP
EXP. JUNE 30, 2010

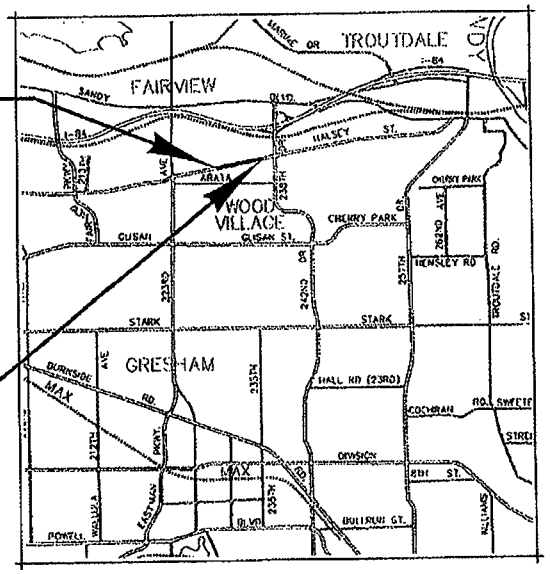


N

Overall Length Of Project – 0.37 Miles

BEG. OF PROJECT
X-STP-C051(070)
STA. 391+00

END OF PROJECT
X-STP-C051(070)
STA. 410+49



STATE OF OREGON
DEPARTMENT OF TRANSPORTATION

PLANS FOR PROPOSED PROJECT
OVERLAY
NE 244TH AVE – HISTORIC COLUMBIA RIVER HWY
NE HALSEY STREET
MULTNOMAH COUNTY
APRIL 2010

MULTNOMAH COUNTY
DEPARTMENT OF COMMUNITY SERVICES
LAND USE AND TRANSPORTATION PROGRAM
1620 S.E. 190th AVE. PORTLAND, ORE. 97233-5910

REGISTERED PROFESSIONAL ENGINEER
81306 PE
OREGON
MAY 13, 2008
ADAM P. SOPLOP
EXP. JUNE 30, 2010

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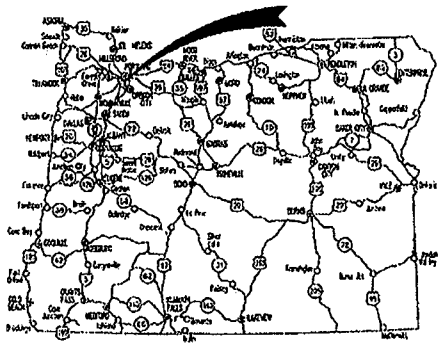
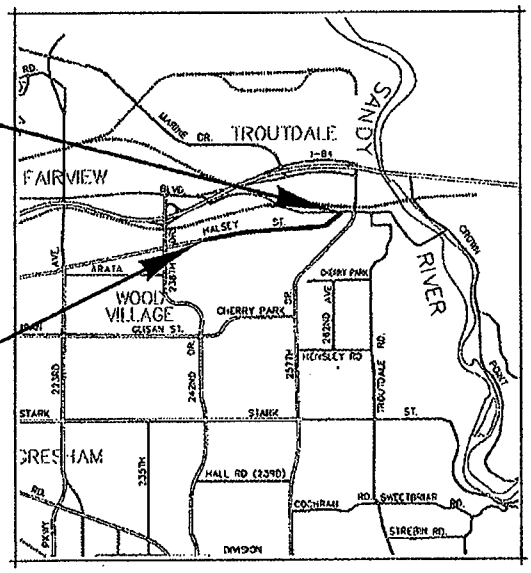


N

Overall Length Of Project – 1.01 Miles

END OF PROJECT
X-STP-C051(070)
STA. 365+85

BEG. OF PROJECT
X-STP-C051(070)
STA. 312+50



Agency/State
Agreement No. 26312

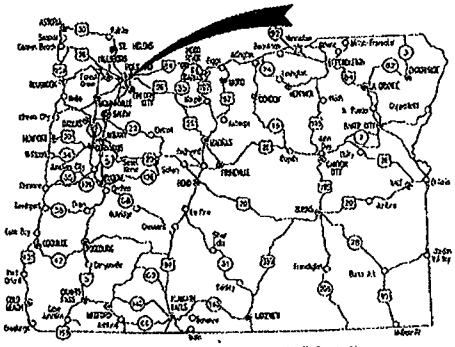
Exhibit A-2
Map

STATE OF OREGON
DEPARTMENT OF TRANSPORTATION

PLANS FOR PROPOSED PROJECT
OVERLAY
NE 203RD AVE – NE FAIRVIEW PARKWAY
NE SANDY BLVD
MULTNOMAH COUNTY
APRIL 2010

MULTNOMAH COUNTY
DEPARTMENT OF COMMUNITY SERVICES
LAND USE AND TRANSPORTATION PROGRAM
1620 S.E. 190th AVE. PORTLAND, ORE. 97233-5910

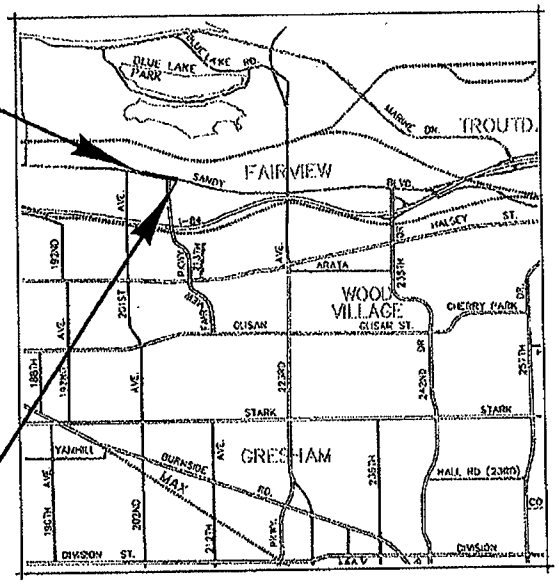
REGISTERED PROFESSIONAL ENGINEER
81306 PE
OREGON
MAY 13, 2008
ADAM P. SOPLOP
EXP. JUNE 30, 2010



Overall Length Of Project – 0.30 Miles

BEG. OF PROJECT
X-STP-C051(070)
STA. 331+25

END OF PROJECT
X-STP-C051(070)
STA. 347+00



STATE OF OREGON
DEPARTMENT OF TRANSPORTATION

PLANS FOR PROPOSED PROJECT

OVERLAY

NE FAIRVIEW PARKWAY – NE 223RD AVE

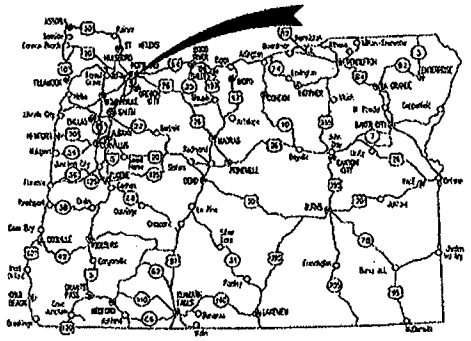
NE SANDY BLVD

MULTNOMAH COUNTY

APRIL 2010

MULTNOMAH COUNTY
DEPARTMENT OF COMMUNITY SERVICES
LAND USE AND TRANSPORTATION PROGRAM
1600 S.E. 190th AVE. PORTLAND, OR. 97233-5910

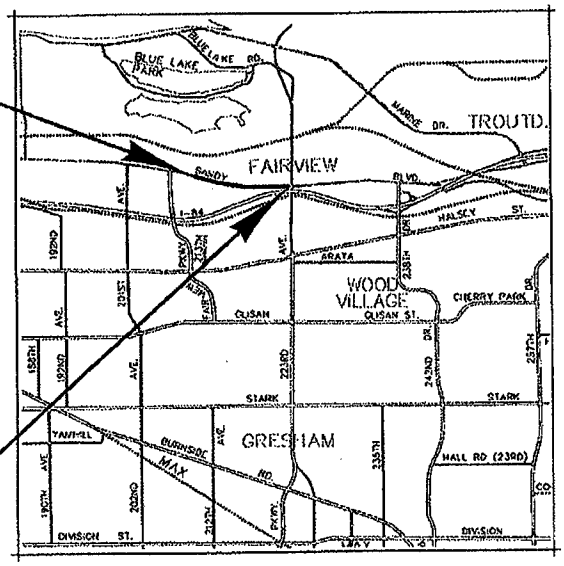
REGISTERED PROFESSIONAL ENGINEER
81306 PE
OREGON
MAY 13, 2008
ADAM P. SOPLOP
EXP. JUNE 30, 2010



Overall Length Of Project – 0.61 Miles

BEG. OF PROJECT
X-STP-C051(070)
STA. 353+00

END OF PROJECT
X-STP-C051(070)
STA. 385+00



STATE OF OREGON
DEPARTMENT OF TRANSPORTATION

PLANS FOR PROPOSED PROJECT

OVERLAY

NE TROUTDALE RD – SE 32ND AVE
SE STARK STREET
MULTNOMAH COUNTY
APRIL 2010

MULTNOMAH COUNTY
DEPARTMENT OF COMMUNITY SERVICES
LAND USE AND TRANSPORTATION PROGRAM
1620 S.E. 190th AVE. PORTLAND, ORE. 97233-5900

ATTENTION:
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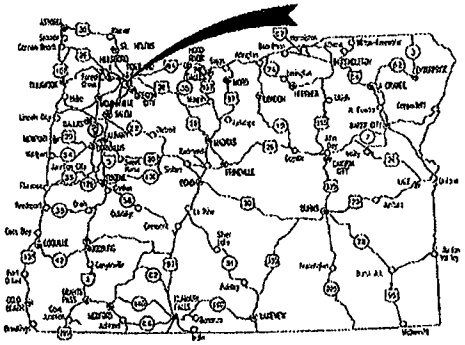
Adopted By The Oregon Utility Notification Center.
Those Rules Are Set Forth In OAR 952-001-0010 Through
OAR 952-001-0090. You May Obtain Copies Of The Rules From The Center
Or Be The Telephone Number For The Oregon Utility Center Is (503) 232-1987.

LET'S ALL WORK TOGETHER TO MAKE THIS JOB SAFE

REGISTERED PROFESSIONAL ENGINEER
81306 PE
OREGON
MAY 13, 2008
ADAM P. SOPLOP

EXP. JUNE 30, 2010

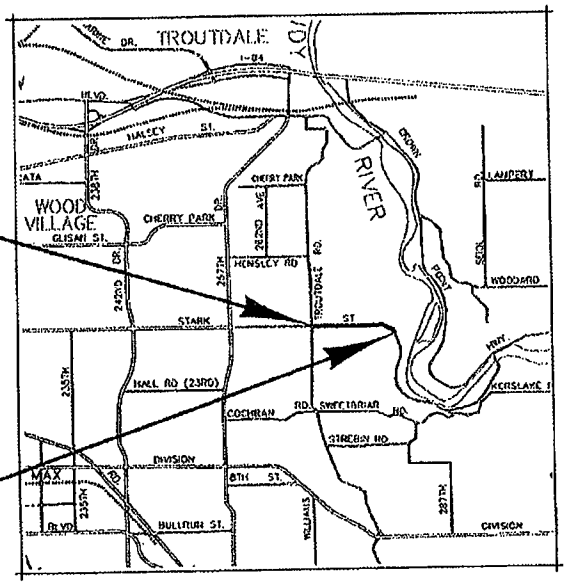


N

Overall Length Of Project – 0.62 Miles

BEG. OF PROJECT
X-STP-C051(070)
STA. 465+65

END OF PROJECT
X-STP-C051(070)
STA. 498+63



Agency/State
Agreement No. 26312

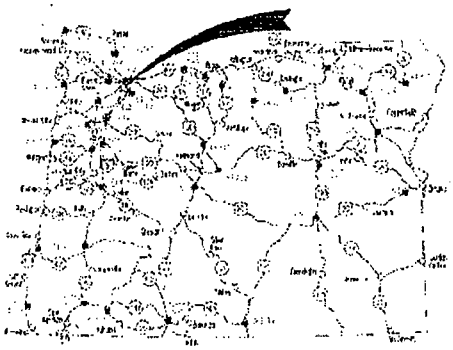
STATE OF OREGON
DEPARTMENT OF TRANSPORTATION

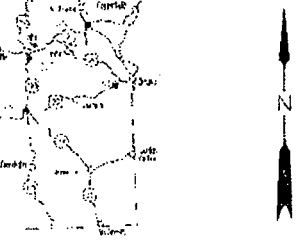
PLANS FOR PROPOSED PROJECT
OVERLAY

E MAIN ST – HWY 26
NE BURNSIDE ST
MULTNOMAH COUNTY
APRIL 2010

MULTNOMAH COUNTY
DEPARTMENT OF COMMUNITY SERVICES
LAND USE AND TRANSPORTATION PROGRAM
1130 S.E. 190th AVE. PORTLAND, ORE. 97233-5910

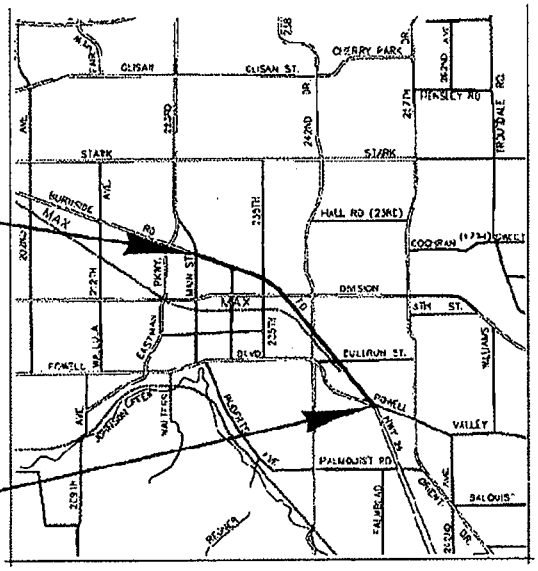
REGISTERED PROFESSIONAL ENGINEER
81306 PE
OREGON
MAY 13, 2008
ADAM P. SOPLOP
EXP. JUNE 30, 2010





BEG. OF PROJECT
X-STP-C051(070)
STA. 361+22

END OF PROJECT
X-STP-C051(070)
153+00



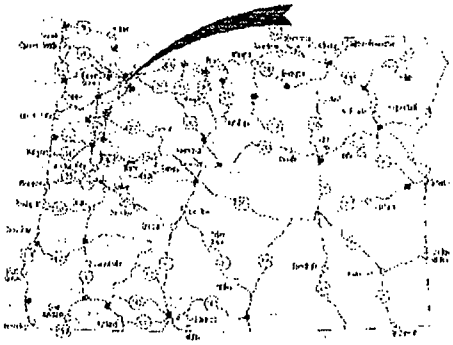
Agency/State
Agreement No. 26312

STATE OF OREGON
DEPARTMENT OF TRANSPORTATION

PLANS FOR PROPOSED PROJECT
OVERLAY
NE STARK ST – NE 17TH AVE
NE 257TH (KANE) STREET
MULTNOMAH COUNTY
APRIL 2010

MULTNOMAH COUNTY
DEPARTMENT OF COMMUNITY SERVICES
ROAD USE AND TRANSPORTATION PROGRAM
1620 S.E. 190th AVE. PORTLAND, OR. 97233-5910

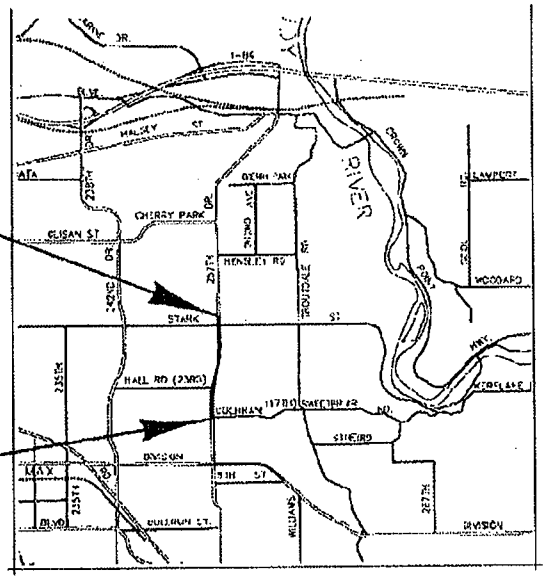
REGISTERED PROFESSIONAL ENGINEER
81306 PE
OREGON
MAY 13, 2009
ADAM P. SOPLOP
EXP. JUNE 30, 2010



N

BEG. OF PROJECT
X-STP-C051(070)
STA. 65+50

END OF PROJECT
X-STP-C051(070)
STA. 103+50

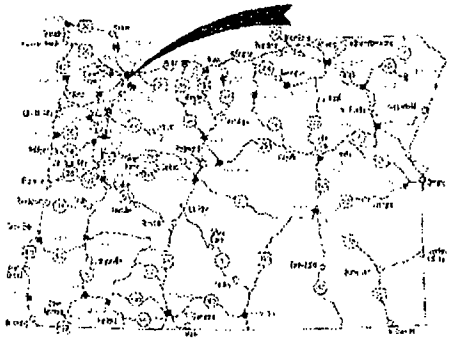


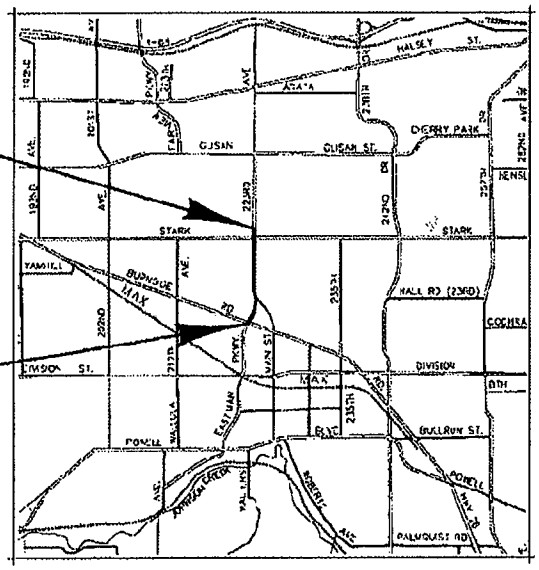
STATE OF OREGON
DEPARTMENT OF TRANSPORTATION

PLANS FOR PROPOSED PROJECT
OVERLAY
NE STARK ST – NE BURNSIDE ST
NE 223RD (EASTMAN) AVE
MULTNOMAH COUNTY
APRIL 2010

MULTNOMAH COUNTY
DEPARTMENT OF COMMUNITY SERVICES
LAND USE AND TRANSPORTATION PROGRAM
1600 S.E. 190TH AVE. PORTLAND, OR. 97233-5910

REGISTERED PROFESSIONAL ENGINEER
81306 PE
OREGON
MAY 13, 2008
ADAM P. SOPLOP
EXP. JUNE 30, 2010





BEG. OF PROJECT
X-STP-C051(070)
STA. 82+00

END OF PROJECT
X-STP-C051(070)
STA. 120+00

ATTACHMENT NO. 1 to Agreement No. 26312
SPECIAL PROVISIONS

1. Agency or its consultant shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates.

2. Upon State's award of the construction contract, Agency, or its consultant, shall be responsible to perform all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract.

3. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered under this Agreement, Agency and Consultant shall enter into a Personal Services Contract approved by State's Chief Procurement Officer or designee (Salem). Said contract must be reviewed and approved by State's Chief Procurement Officer or designee prior to beginning any work. This review includes, but is not limited to the Request for Proposal, Statement of Work, advertisement and all contract documents. This review and approval is required to ensure federal reimbursement.

4. State may make available Region 1's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work performed by the Consultant and reimburse State for payment of any Consultant costs that are not eligible as federal participating costs or that are not included as part of the total cost of the Project.

5. Final billings shall be submitted to State for processing within two (2) years from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) and 2) third notification for construction. Partial billing (progress payment) shall be submitted to State within one (1) year from the date that costs are incurred. Final billings submitted after two (2) years shall not be eligible for reimbursement. No ARRA funded invoices will be accepted and no ARRA funded payments will be made after September 30, 2015. State shall not be responsible to provide additional funding to Agencies that do not have final billings processed before this date.

6. If Project involves pavement overlay on a bridge, Agency shall either (a) load rate the bridge when adding two (2) inches of pavement depth to an existing bridge deck to determine the capacity of the bridge or (b) remove two inches of Asphalt Concrete (AC) from the bridge deck and then place two inches back for a zero net gain of

Asphalt Concrete (in-lay/over-lay) on the bridge deck. Agency shall then sawcut the new AC pavement at the bridge ends and fill with poured joint filler to account for bridge movement.

7. If Project is a 1R resurfacing project included in the Statewide Programmatic Categorical Exclusion approved for ARRA projects, Agency shall ensure that Project conforms to the 1R Resurfacing Guidelines, attached by reference and shown on http://www.oregon.gov/ODOT/HWY/LGS/online.shtml.

8. This Project Agreement does not require a Right of Way Services agreement as described in Standard Provisions, Paragraph 18. This Project will require right of way certification. Agency shall complete and sign the attached Right of Way Certification form, shown on Exhibit B, attached hereto and by this reference made a part hereof.

9. Agency shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation and/or service demand. State and Agency agree that the useful life of this Project is defined as eight (8) calendar years. State may conduct periodic inspections during the life of the Project to verify that Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of this Agreement.

10. Job Recruitment – In addition to normal recruitment processes on all ARRA funded projects, the contractor and all subcontractors shall also list job openings through "WorkSource Oregon" with the exception that job listings are not necessary when the contractor or subcontractor fills a job opening with a present employee, a laid-off former employee, or a job candidate from a previous recruitment.

11. Agency shall include the ARRA requirements in any contract it enters into, including consultant contracts, and subcontracts at any tier. Agency may modify language to match its own specifications, but such modifications shall be reviewed and approved by State prior to incorporation into any contract.

12. Agency shall comply with ARRA that provides the U.S. Comptroller General and his representatives with the authority: "(1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to the contract or subcontract; and (2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions."

13. Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this Agreement, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

14. Agency shall comply with the ARRA requirements that provide authority for any representatives of the Inspector General to examine any records or interview any employee or officers working on this Agreement. Agency is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this Project. Section 1515(b) of the ARRA further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

15. Whistleblower Protection – The Agency and its Contractor shall, and shall require its subcontractors to, comply with Section 1553 of ARRA, which prohibits all non-federal contractors of ARRA funds, including the State of Oregon, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee as a reprisal for the employee's disclosure of information that the employee reasonably believes is evidence of: (a) gross mismanagement of a contract or grant relating to ARRA funds; (b) a gross waste of ARRA funds; (c) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (d) an abuse of authority related to implementation or use of ARRA funds; or (e) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. The Contractor and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of ARRA.

16. False Claims Act – The Contractor shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor or other person has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

Agency/State
Agreement No. 26312

Exhibit B
Right of Way Certification Form

Oregon Department of Transportation

RIGHT-OF-WAY CERTIFICATION
Local Government ARRA 1R Projects

1. Project Information:

Section _____ Bid Opening _____

Highway _____ FAP No._____

County/City_____Key No._____

R/W Map # NONE

2. Primary Declaration:

(Modify or delete statements that do not apply then delete this instruction).
I certify that to the best of my knowledge the following statements are correct with regard to the right-of-way for this project (23 CFR 635.309):

No additional right-of-way was acquired. Construction can be accomplished within the existing right-of-way.

3. Signature of Certifying Agency: (Both signatures required on Local Public Agency Projects).

_____ _____
(enter name), Asst. State R/W Manager Local Government Agency

_____ _____
Date Date

4. Distribution: (modify the distribution to fit your particular Region, with the exception of R/W Project Administration)

Original: R/W Project Administration
Copy: Local Governments Section
Copy: Region R/W Manager
Copy: Region Local Agency Liaison

ATTACHMENT NO. 2

STANDARD PROVISIONS

JOINT OBLIGATIONS

PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.

2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

PRELIMINARY & CONSTRUCTION ENGINEERING

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.

4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

REQUIRED STATEMENT FOR United States Department of Transportation (USDOT) FINANCIAL ASSISTANCE AGREEMENT

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in Title 49, CFR, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.

6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in Title 49, CFR, Part 26, have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with Title 49, CFR, Part 26, to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of Title 49, CFR, Part 26, in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.

7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.

8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.

9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; OMB CIRCULAR NO. A-87 and NO. A-133 Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide (FAPG).

STATE OBLIGATIONS

PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The program shall include services to be provided by State, Agency, or others. State shall notify

Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.

PROJECT ACTIVITIES

12. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.

13. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.

14. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.

15. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.

16. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

RIGHT OF WAY

17. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.

18. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.

19. State shall review all right of way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.

20. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.

21. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.

22. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

AGENCY OBLIGATIONS

FINANCE

23. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement. If federal funds are used, Agency will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. Agency will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.

24. Agency's estimated share and advance deposit.

    A. Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.

    B. Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within

forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.

C. Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.

D. Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.

25. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.

26. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.

27. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.

28. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving $500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal program.

29. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.

30. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title 23 CFR Parts 1.11, 140 and 710. Final billings shall be submitted to State for processing within three months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering 2) last payment for right-of-way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.

31. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR 18.42).

32. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:

    a) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;

    b) Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.

    c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).

33. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

RAILROADS

34. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others.

Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

UTILITIES

35. Agency shall cause to be relocated or reconstructed, all privately or publicly-owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements of the Project. Only those utility relocations, which are eligible for federal-aid participation under, Title 23 CFR 645A, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.

36. Agency shall follow established State utility relocation policy and procedures. The policy and procedures are available through the appropriate State's Region Utility Specialist or State's Right of Way Section Railroad Liaison, and Utility Engineer.

STANDARDS

37. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "State Highway Design Manual" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".

38. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Plan", unless otherwise requested by Agency and approved by State.

39. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".

40. All plans and specifications shall be developed in general conformance with the current "Contract Plans Development Guide" and the current "Oregon Standard Specifications for Highway Construction" and/or guidelines provided.

41. The standard unit of measurement for all aspects of the project shall be English Units. All project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

GRADE CHANGE LIABILITY

42. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.

43. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.

44. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

CONTRACTOR CLAIMS

45. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.

46. Notwithstanding the foregoing defense obligations under Paragraph 45, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

MAINTENANCE RESPONSIBILITIES

47. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

WORKERS' COMPENSATION COVERAGE

48. All employers, including Agency that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its contractors complies with these requirements.

LOBBYING RESTRICTIONS

49. Agency certifies by signing the Agreement that:

    A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed $100,000, and that all such subrecipients shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.

E. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Paragraphs 35, 36, and 47 are not applicable to any local agency on state highway projects.

MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (revised 09/22/08)

Board Clerk Use Only	
Meeting Date:	01/21/2010
Agenda Item #:	C-3
Est. Start Time:	9:30 AM
Date Submitted:	01/06/2010

Agenda Title: **Intergovernmental Revenue Agreement 0910092 with the City of Gresham for the Design and Construction of Asphalt Overlays upon City Roads in Conjunction with a Multnomah County Overlay Project Utilizing Funds from the American Recovery and Reinvestment Act of 2009**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title sufficient to describe the action requested.

Requested Meeting Date:	January 21, 2010	**Amount of Time Needed:**	N/A
Department:	Community Services	**Division:**	Land Use & Trans Program
Contact(s):	Brian Vincent, PE, County Engineer		
Phone:	(503) 988-5050 **Ext.** 29642	**I/O Address:**	#425/2nd Floor
Presenter(s):	Consent Calendar		

General Information

1. **What action are you requesting from the Board?**

   The Department of Community Services' Land Use and Transportation Program requests approval of an Intergovernmental Agreement with the City of Gresham to place asphalt overlays upon City streets using funds from the American Recovery and Reinvestment Act of 2009 and as part of a County ARRA project.

2. **Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

   The City of Gresham pursued and was awarded a project using funds from the American Recovery Reinvestment Act of 2009 (ARRA). That project (242nd Ave widening) realized a bid award much less than anticipated and, as a result, had unspent ARRA funding. The City developed a replacement project for asphalt overlays to various streets in the City to use those remaining funds. The City was aware of the County's ARRA Asphalt Overlay project and requested to be added to the County's contract in order to realize contract and work efficiencies. To enable that addition, the City agreed to transfer their $630,000 of ARRA funding (via ODOT) to the County's project. This IGA documents that agreement and the City's recognition that they are responsible for any and all costs associated with the overlay work on City streets. The County's IGA with the Oregon Department of Transportation for the Asphalt Overlay contract was increased from $580,000 to $1,210,000 to reflect this added work.

3. **Explain the fiscal impact (current year and ongoing).**

   There is no impact to the County. The City of Gresham will fully compensate County costs associated with this work specified in this agreement. City and County transportation staff will manage the scope of the project as necessary to stay within this limit.

4. **Explain any legal and/or policy issues involved.**

   None

5. **Explain any citizen and/or other government participation that has or will take place.**

   N/A. This IGA discusses financial arrangements between the parties to execute the work. The County project will conduct public notification prior to construction activities, tentatively scheduled for late spring 2010.

Required Signature

Elected Official or Department/ Agency Director: M. Cecilia Johnson **Date: 01/06/2010**

MULTNOMAH COUNTY CONTRACT APPROVAL FORM (CAF)

Contract #: 0910092

Pre-approved Contract Boilerplate (with County Attorney signature) ☒Attached ☐Not Attached Amendment #: _____

CLASS I Based on Informal / Intermediate Procurement	CLASS II Based on Formal Procurement	CLASS III Intergovernmental Contract (IGA)
☐ Personal Services Contract	☐ Personal Services Contract	☐ Expenditure Contract ☒ **Revenue Contract** ☐ Grant Contract ☐ Non-Financial Agreement
PCRB Contract ☐ Goods or Services ☐ Maintenance or Licensing Agreement ☐ Public Works / Construction Contract ☐ Architectural & Engineering Contract	PCRB Contract ☐ Goods or Services ☐ Maintenance or Licensing Agreement ☐ Public Works / Construction Contract ☐ Architectural & Engineering Contract	
☐ Revenue Contract ☐ Grant Contract ☐ Non-Financial Agreement	☐ Revenue Contract ☐ Grant Contract ☐ Non-Financial Agreement	☐ **INTER-DEPARTMENTAL AGREEMENT (IDA)**

Department:: Community Services Division/ Program: Land Use and Trans Program Date: 12/23/09

Originator: Adam Soplop/Brian Vincent Phone: (503) 988-5050 x22604/x29642 Bldg/Room: 425/Yeon

Contact: Cathey Kramer (Administrative) Phone: (503) 988-5050 x22589 Bldg/Room: 425/Yeon

Description of Contract: An Intergovernmental Agreement (IGA) between Multnomah County and the City of Gresham for asphalt concrete pavement overlay on specific sections of Burnside Road, Kane Road, and Eastman Parkway, utilizing American Recovery and Reinvestment Act of 2009 (ARRA) funds. This is a Revenue IGA.

RENEWAL: ☐ PREVIOUS CONTRACT #(S) _____ EEO CERTIFICATION EXPIRES _____

PROCUREMENT, EXEMPTION OR CITATION # _____ ISSUE DATE: _____ EFFECTIVE DATE: _____ END DATE: _____

CONTRACTOR IS: ☐ MBE ☐ WBE ☐ ESB ☐ QRF State Cert# _____ or ☐ Self Cert ☐ Non-Profit ☒ N/A *(Check all boxes that apply)*

Contractor	City of Gresham			Remittance address *(If different)*	
Address	1333 NW Eastman Parkway				
City/State	Gresham OR			Payment Schedule / Terms:	
ZIP Code	97030			☐ Lump Sum $	☐ Due on Receipt
Phone	(503) 618-2630 – Fax: (503) 665-6825 (Don Bilyeu)			☐ Monthly $	☐ Net 30
Employer ID# or SS#	N/A			☒ Other $	☐ Other
Contract Effective Date	01/07/2010	Term Date	01/06/2013	☐ Price Agreement (PA) or Requirements Funding Info:	
Amendment Effect Date		New Term Date			
Original Contract Amount	$			Original PA/Requirements Amount	$
Total Amt of Previous Amendments	$			Total Amt of Previous Amendments	$
Amount of Amendment	$			Amount of Amendment	$
Total Amount of Agreement $	$ 580,000.00			Total PA/Requirements Amount	$

REQUIRED SIGNATURES:

Department Manager _____ DATE 1/06/10

County Attorney /s/ Matthew O. Ryan DATE 12/09/2009

CPCA Manager _____ DATE _____

County Chair _____ DATE 01/27/2010

Sheriff _____ DATE _____

Contract Administration _____ DATE _____

COMMENTS: (WBS: ROADEG520)

APPROVED: MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-3 DATE 01/21/2010
DEBORAH L. BOGSTAD, BOARD CLERK

Exhibit A, Rev. 1/17/06 dg

-----Original Message-----
From: RYAN Matthew O
Sent: Wednesday, December 09, 2009 3:33 PM
To: VINCENT Brian S
Cc: PEOPLES Kim E
Subject: FW: Mult Co ARRA 1R Key #16943
Importance: High

Brian,
As we discussed I tweaked this yet again and added language to obligate Gresham to be responsible for post construction obligations.
Also I have reviewed the ODOT IGA and it's approved for submission to the BCC for its consideration. Thanks.

Matthew O. Ryan
Assistant County Attorney
Office of Multnomah County Attorney
501 SE Hawthorne Blvd, Suite 500
Portland, Oregon 97214
Tel: 503-988-3138; Fax: 503-988-3377
matthew.o.ryan@co.multnomah.or.us
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-----Original Message-----
From: RYAN Matthew O
Sent: Tuesday, December 08, 2009 10:02 AM
To: VINCENT Brian S
Cc: PEOPLES Kim E
Subject: FW: Mult Co ARRA 1R Key #16943
Importance: High

Brian,
Thanks for the heads up about the ARRA allocation and ODOT's control of the funds. I added a section to the Recitals to address the concern I still had about the commitment of the funds. Thanks.

Matthew O. Ryan
Assistant County Attorney
Office of Multnomah County Attorney
501 SE Hawthorne Blvd, Suite 500
Portland, Oregon 97214
Tel: 503-988-3138; Fax: 503-988-3377
matthew.o.ryan@co.multnomah.or.us
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not the addressee, please do not review, disclose, copy or distribute this transmission. If you have received this transmission in error, please contact the sender immediately

INTERGOVERNMENTAL AGREEMENT

Multnomah County No. 0910092

This is an Agreement between the City of Gresham, a political subdivision of the State of Oregon ("The City"), and Multnomah County, a political subdivision of the State of Oregon ("The County"), pursuant to authority granted in ORS Chapter 190.

PURPOSE:

The purpose of this Agreement is to provide for the design and construction of an asphalt concrete pavement overlay along Burnside Road (Main St. to Powell Blvd.), Kane Road (Stark St. to 17th St.), and Eastman Parkway (Stark St. to Powell Blvd.), City Streets under the jurisdiction of the City, and to establish the parties' obligations with respect to the Project. The parties have determined that the Project is necessary for the improved public safety and functionality these roads.

RECITALS:

1. The County and the City are both sub-recipients of grant funding resulting from the American Recovery and Reinvestment Act of 2009 (ARRA).

2. The City and County both desire to construct an asphalt concrete pavement overlay to various segments of their transportation systems.

3. The County had initiated project development when the City learned of additional grant funding availability and the City desires to participate in County project in order to achieve economy of scale in development and construction. The City and County agree that mutual interests and benefits are derived through a combined joint road improvement project of certain County Roads and City Streets (the "Project").

4. The Oregon Department of Transportation (ODOT) and Metropolitan Planning Organization both concur with the City and County request for the Project.

5. ODOT and Multnomah County have entered into a Local Agency Agreement (LAA) for the Project; that includes the work to be done in the City of Gresham on City Streets as well as the County Roads outside of the City. This LAA is identified ODOT Agreement No. 26312.

6. The scope and details of the Project are as set forth in that certain LAA; ODOT Agreement No. 26312.

7. ODOT is in possession of the identified ARRA funds that are to be used for this Project. The Parties stipulate and commit to the allocations of their individual portion of those ARRA funds as further provided herein.

THE PARTIES AGREE AS FOLLOWS:

1. **TERM.** The term of this agreement shall be from the date that all required signatures have been obtained to the completion of the Project and final payment, or two calendar years following the date that all required signatures have been obtained, whichever is sooner.

2. **RECITALS ARE INCORPORATED.** The above Recitals are contractual and incorporated by this reference.

3. **RESPONSIBILITIES OF THE COUNTY.** The County agrees to provide the following services:

   A. Designate the County Project Manager, who shall be:
      Name: Adam Soplop, PE
      Address: 1620 SE 190th Ave., Portland OR 97233
      Phone: (503) 988-5050 x22604 – Fax: (503) 988-3321
      E-mail: adam.soplop@co.multnomah.or.us
   B. County's Project Manager and/or appropriate staff shall regularly meet with City during the design and construction stages of the Project and provide timely responses to City's inquiries regarding the Project.
   C. The County will design and manage the construction of the Project in compliance with ODOT guidelines.
   D. County will coordinate with ODOT for the advertisement; and provided an acceptable responsive bid is received for the Project, ODOT will award the contract.
   E. If ODOT does award the construction contract, the County shall maintain copies of all project documents, which shall be available for review by the City.
   F. County shall furnish to ODOT, prior to advertisement, a guarantee to fund any difference between 110% of the construction estimate and available ARRA grant funding for County portion of the Project.
   G. County's estimated ARRA allocation for its portion of the Project is $580,000.

4. **RESPONSIBILITIES OF CITY.** City agrees to provide the following services:

   A. Designate the City's Project Manager, who shall be:
      Name: Don Bilyeu
      Address: Gresham City Hall
      1333 NW Eastman Parkway
      Gresham OR 97030
      Phone: (503) 618-2630 – Fax: (503) 665-6825
      E-mail: don.bilyeu@greshamoregon.gov
   B. Meet regularly with County during the design and construction stages of the Project.
   C. Timely respond to County's Project Manger's inquiries regarding the Project.
   D. Participate in all scheduled public meeting(s).
   E. City will allow County project team unrestricted access to City segments of the Project, in order to manage construction progress and execution.
   F. City will waive any Street or public right-of-way use, construction, or access permits normally required under the City Code for the design and construction work to be performed under this Agreement.
   G. City will relay any construction contract concerns to County project manager for resolution and will not engage in the construction management effort unless mutually agreed on by both parties. Any construction changes requested by the City will be timely submitted in writing to County's project manager and if mutually agreed to by the Parties in writing will be funded out of City sources unless the Parties mutually agreed in writing to an alternate method.

H. City shall furnish to ODOT, prior to advertisement, a guarantee to fund any difference between 110% of the construction estimate and available ARRA grant funding for City portion of the Project.

City's estimated ARRA allocation for its portion of the Project is $630,000.

5. **TERMINATION.** This Agreement may be terminated by either party upon 60 days' written notice.

6. **INDEMNIFICATION.**

A. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the financial limits therein, County shall indemnify, defend, and hold harmless City from and against all liability, loss, and costs arising out of or resulting from the acts of County, its officers, employees, and agents in the performance of this agreement.

B. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the financial limits therein, City shall indemnify, defend, and hold harmless County from and against all liability, loss, and costs arising out of or resulting from the acts of City, its officers, employees, and agents in the performance of this agreement.

6. **INSURANCE.** Each party shall be responsible for providing workers' compensation insurance as required by law. Neither party shall be required to provide or show proof of any other insurance coverage.

7. **ADHERENCE TO LAW.** Each party shall comply with all federal, state, and local laws and ordinances applicable to this agreement.

8. **NON-DISCRIMINATION.** Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.

9. **ACCESS TO RECORDS.** Each party shall have access to the books, documents, and other records of the other which are related to this agreement for the purpose of examination, copying, and audit, unless otherwise limited by law.

10. **SUBCONTRACTS AND ASSIGNMENT.** Neither party will subcontract or assign any part of this agreement without the written consent of the other party.

11. **THIS IS THE ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties. This Agreement may be modified or amended only by the written agreement of the parties.

12. **ADDITIONAL TERMS AND CONDITIONS:**

A. Both parties agree that the final design, specifications, plans and standards and engineer's estimate for the Project shall be mutually approved before the advertisement for bids is published.

B. In the event the construction bids returned to the County exceed by 10% or more the estimated cost of the Project, the parties agree to meet timely to resolve how to fund the additional cost or revise the proposed project to stay within budget. If a mutually acceptable resolution is not obtained, the Project will be cancelled, and this Agreement will be terminated.

C. Each party shall be responsible for the contractual obligations imposed upon completion of the construction phase of the Project under ODOT Agreement No. 26312 for that portion of the Project under the jurisdiction of the party, including but not limited to the maintenance and operation of the Project; as provided in the Attachment No. 1, "Special Provisions" and Attachment No. 2, "Standard Provisions" to ODOT Agreement No. 26312.

BOARD OF COUNTY COMMISSIONERS FOR MULTNOMAH COUNTY, OREGON

By: _____
Ted Wheeler

Title: Multnomah County Chair

Date: 01/27/2010

CITY OF GRESHAM

By: _____

Title: Erik Kvarsten
City Manager

Date: 1/4/10

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY

By: */s/ Matthew O. Ryan*
Matthew O. Ryan
Assistant County Attorney

Date: 12/09/2009

APPROVED AS TO FORM:

CITY ATTORNEY FOR
CITY OF GRESHAM, OREGON

By: _____

Date: 12-18-09

APPROVED: MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-3 DATE 01/21/2010
DEBORAH L. BOGSTAD, BOARD CLERK

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BOARD OF COUNTY COMMISSIONERS FOR MULTNOMAH COUNTY, OREGON

By: _____
Ted Wheeler

Title: Multnomah County Chair

Date: _____

CITY OF GRESHAM

By: _____

Title: _____

Date: _____

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY

By: */s/ Matthew O. Ryan*
Matthew O. Ryan
Assistant County Attorney

Date: 12/09/2009

APPROVED AS TO FORM:

CITY ATTORNEY FOR
CITY OF GRESHAM, OREGON

By: _____

Date: _____

MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (revised 09/22/08)

Board Clerk Use Only

Meeting Date:	01/21/2010
Agenda Item #:	R-1
Est. Start Time:	9:30 AM
Date Submitted:	01/04/2010

Agenda Title: **RESOLUTION Adopting Revised Multnomah County Public Contract Review Board Rules Effective January 21, 2010**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title sufficient to describe the action requested.

Requested Meeting Date:	January 21, 2010	**Amount of Time Needed:**	5 mins
Department:	County Management	**Division:**	CPCA
Contact(s):	Brian R. Smith, Barry Zimmerman		
Phone:	503-988-5111 **Ext.** 24173	**I/O Address:**	503/4
Presenter(s):	Brian R. Smith, Barry Zimmerman		

General Information

1. **What action are you requesting from the Board?**
   Review and adoption of PCRB revisions
2. **Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**
   Attached Summary of proposed changes and copy of PCRB's
3. **Explain the fiscal impact (current year and ongoing).**
   None
4. **Explain any legal and/or policy issues involved.**
   Legal review completed 17 December 09
5. **Explain any citizen and/or other government participation that has or will take place.**
   N/A

Required Signature

Elected Official or Department/ Agency Director: Mindy Harris **Date:** 01/07/2010

MULTNOMAH COUNTY OREGON

PCRB

January 21, 2010

This Change is issued to the above referenced instruction PCRB to make the following changes, additions, deletions, and/or formatting changes. **Annotated to show changes, deletions and modifications from last revision.**

DIVISION 5	
Introduction **Date Change**	
DIVISION 10	
10-0000 Definitions **Modify**	**Addendum or Addenda**. A *written or electronic* addition or deletion to, a material change in, or general interest explanation of the Solicitation Document.
10-0000 Definitions **Add**	**Good Cause**. (1) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract; (2) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated; (3) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed; (4) Any other circumstances in which County's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the County's practical need for the highest prevalent standard in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the Contract.
10-0000 Definitions - Invitation to Bid or ITB **Modify**	**Invitation to Bid or ITB.** The Solicitation document inviting ~~of~~ competitive, Written, Signed and sealed ~~Bids~~ Offers from prospective Contractors in which Specification, price and delivery (or project completion) are the predominant Award criteria.
10-0000 Definitions **Modify**	**Offer**. A Written Bid, Proposal or Quote offering to provide Goods or Services in ~~or other~~ response to a Solicitation ~~as applicable~~.

10-0000 Definitions **Modify**	**Solicitation Document.** An Invitation to Bid, Request for Proposals, Request for Quotes or other ***similar*** document issued to invite offers from prospective contractors. This term does not apply to Intermediate Procurements, Informal Quotes or Procurements under 47-0265, 47-0270, 48-0210 or 49-0160. The following are not Solicitation Documents if they do not invite Offers from prospective Contractors: a Request for Qualifications, a prequalification of bidders, a request for information, or a request for product prequalification.
DIVISION 15	
15-0000 1(g) **Modify**	Review and approve or deny, on behalf of the Chair, contract amendments that exceed 20% of the original contract authority amount for contracts of $150,000 or less.
15-0000 1(h) **Modify**	Review and approve or deny, on behalf of the Chair, public improvement contract amendments that exceed 20%, or in the case of contracts for renovation or remodel, 33% of the original contract authority amount for contracts of $75,000 or less
DIVISION 20	
None	
DIVISION 46	
46-0210 3 (a) **Modify**	That the Offeror has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, Women or Emerging Small Business enterprise certified under ORS 200.055 or against a business enterprise that is owned or controlled by or employs a disabled veteran as defined in ORS 408.225; and
46-04900 2 **Modify**	CPCA is responsible for initiating and maintaining the procurement file for procurement processes performed by CPCA for Countywide procurements and formal procurements processed on behalf of a Department.
46-0490 5 (a) **Modify**	~~An~~ copy of an executed contract, if awarded;
46-0490 6 (g) **Modify**	~~All~~ information describing how the Contractor was selected, including the basis for awarding the Contract;

DIVISION 47	
47-0250 Heading **Modify**	Methods of Source Selection; **Feasibility Determination; Cost Analysis**
47-0250 1 **Modify**	**Methods of Source Selection** Except as otherwise permitted by these Rules, Awards of Public Contracts for Goods or Services shall be based on Offers received in response to either competitive sealed Bids pursuant to Rules 47-0255 and 47-0257 or competitive sealed Proposals pursuant to Rules 47-0260 to 47~~0~~-0263.
47-0250 2 **Add**	**Analysis Required Before Conducting Certain Procurements Over $250,000**. Before conducting a procurement for services (except for a procurement for "client services" as that term is defined in OAR 125-246-0110) with an estimated Contract Price greater than $250,000 a Department shall make a determination in Writing that using the County's own personnel or resources to perform the services that the Department intends to procure is not feasible. If the Department determines that performing the services the Department intends to procure with County resources and personnel is feasible, before conducting a procurement for such services, the Department shall conduct a cost analysis and make a Written determination that the County would incur less cost in conducting the procurement than performing the services with the County's own personnel and resources.
47-0250 3 **Add**	**Feasibility Determination**. Before determining that using County personnel and resources is not feasible because the County lacks the personnel and resources to perform the services the Department intends to procure the Department shall make a determination that the circumstances in subsection (a) or (b) exist at the time of the proposed procurement:
47-0250 3 a **Add**	The County lacks the specialized capabilities, experience or technical or other expertise necessary to perform the services. In making the finding, the Department shall compare the County's capability, experience or expertise in the field most closely involved in performing the services with a potential contractor's capability, experience or expertise in the same or a similar field; or
47-0250 3 b **Add**	Special circumstances require the County to procure the services by contract. Special circumstances may include, but are not limited to, circumstances in which:
47-0250 3 b (A) **Add**	The terms under which the County receives a grant or other funds for use in a procurement require the County to obtain services through an independent contractor;
47-0250 3 b (B) **Add**	Other state or federal law requires the County to procure services through an independent contractor;
47-0250 3 b (C) **Add**	The procurement is for services that are incidental to a contract for purchasing or leasing real or personal property, including service and maintenance agreements for equipment that is leased or rented;
47-0250 3 b (D) **Add**	The Department cannot accomplish policy, administrative or legal goals, including but not limited to avoiding conflicts of interest or ensuring independent or unbiased findings in cases when using the County's existing personnel or persons the County could hire through a regular or ordinary process would not be suitable;

47-0250 3 b (E) **Add**	The procurement is for services which are being procured using an Emergency Procurement process authorized by these Rules;
47-0250 3 b (F) **Add**	The procurement is for services, the need for which is so urgent, temporary or occasional that attempting to perform the services with the County's own personnel
47-0250 3 b (G) **Add**	or resources would cause a delay that would frustrate the purpose for obtaining the services;
47-0250 3 b (H) **Add**	The services that the Department intends to procure will be completed within six months after the date on which the contract for the services is executed; or
47-0250 3 b (I) **Add**	Other circumstances, conditions or occurrences would make the Services, if performed by the County's employees, incapable of being managed, utilized or dealt with successfully in terms of the quality, timeliness of completion, success in obtaining desired results, or other reasonable needs of the County.
47-0250 4 **Add**	Written Cost Analysis. If a determination is made after completion of the analysis in subsection (3) above that it is feasible to perform the services the Department intends to procure with the County's own personnel or resources, before proceeding with the procurement, the Department shall conduct a Written cost analysis which shall include the following:
47-0250 4 a **Add**	Basic Comparison. The Written cost analysis must compare an estimate of the County's cost of performing the Services with an estimate of the cost a potential Contractor would incur in performing the Services. However, the Department may proceed with the Procurement for Services only if it determines that the County would incur more cost in performing the Services with the County's own personnel or resources than it would incur in procuring the Services from a Contractor.
47-0250 4 b **Add**	Costs of Using County's Own Personnel and Resources. When estimating the County's cost of performing the Services, the Department shall consider cost factors that include:
47-0250 4 b (A) **Add**	The salary or wage and benefit costs for the employees of the County who would be directly involved in performing the Services. These costs include those salary or wage and benefit costs of the employees who inspect, supervise or monitor the performance of the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision, or monitoring of the performance of the subject Services.
47-0250 4 b (B) **Add**	The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, equipment and supplies used or consumed in the provision of the Services.
47-0250 4 b (C) **Add**	The costs incurred in planning for, training for, starting up, implementing, transporting and delivering the Services.

47-0250 4 b (D) **Add**	Any costs related to stopping and dismantling a project or operation because the Department intends to procure a limited quantity of Services or to procure the Services within a defined or limited period of time.
47-0250 4 b (E) **Add**	The miscellaneous costs related to performing the Services. These costs exclude the County's indirect overhead costs for existing salaries or wages and benefits for administrators, and exclude costs for rent, equipment, utilities and materials, except to the extent the cost items identified in this sentence are attributed solely to performing the Services and would not be incurred unless the County performed the Services.
47-0250 4 b (F) **Add**	The costs in subsections (A) through (E) of this rule do not constitute an exclusive list of cost information. A Department may consider other reliable information that bears on the cost to the County of performing the Services. For example, if the Department has accounted for its actual costs of performing the Services under consideration, or reasonably comparable Services, in a relatively recent Services project, the Department may consider those actual costs in making its estimate.
47-0250 4 c **Add**	Costs a Potential Contractor Would Incur. When estimating the costs a potential Contractor would incur in performing the Services, the Department shall consider cost factors that include:
47-0250 4 c (A) **Add**	The average or actual salary or wage and benefit costs for Contractors and Contractor employees:
47-0250 4 c (A) i **Add**	Who work in the business or industry most closely involved in performing the Services; and
47-0250 4 c (A) ii **Add**	Who would be necessary and directly involved in performing the Services or who would inspect, supervise or monitor the performance of the Services.
47-0250 4 c (B) **Add**	The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.
47-0250 4 c (C) **Add**	The miscellaneous costs related to performing the Services. These miscellaneous costs include reasonably foreseeable fluctuations in the costs listed in this rule over the expected duration of the Procurement.
47-0250 4 c (D) **Add**	The costs described in subsections (A) through (C) of this subsection do not constitute an exclusive list of cost information. A Department may consider other reliable information that bears on the costs a potential Contractor would incur. For example, if the County, in the reasonably near past, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable Services, the Department may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the Department may consider what the County actually paid out under a Contract for the same or similar Services.

47-0250 5 **Add**	**Decision Based on Cost Comparison**. After comparing the difference between the costs estimated for the County to perform the Services and the estimated costs a potential Contractor would incur in performing the Services, subject to the exceptions in subsections (6) and (7) below, a Department may proceed with the Procurement if the County would incur more cost in performing the Services with the County's own personnel and resources than it would incur in procuring the Services from a Contractor.
47-0250 6 **Add**	**Exception Based on Salaries or Wages and Benefits**. If the sole reason that the costs estimated for the County to perform the Services exceed the estimated costs a potential Contractor would incur in performing the Services is because the average or actual salary or wage and benefit costs for a Contractor's employees are lower than the salary or wage and benefit costs for employees of the County, then the Department may not proceed with the Procurement.
47-0250 7 **Add**	**Exception Based on Lack of County Personnel and Resources**. In cases in which the Department determines that it would incur less cost in providing the Services with its own personnel and resources, the Department nevertheless may proceed with the Procurement if, at the time the Department intends to conduct the Procurement, the County determines that it lacks personnel and resources to perform the Services within the time the Department requires them.
47-0250 8 **Add**	**Reporting**. When a Department conducts a procurement under this section, the Department shall maintain all records of the analyses described in this section in the project file and shall provide to the CPCA Manager copies of each Written determination that the County lacks personnel and resources to perform the Services within the time the Department requires them and each Written cost analysis. The CPCA Manager shall provide to the Board each calendar quarter, copies of each Written cost analysis and Written determination prepared under this section.
47-0255 1 i (F) **Modify**	~~Contractors~~ **Bidder's** certification of nondiscrimination in obtaining required subcontractors in accordance with Rule 46-0210;
47-0255 1 j **Modify**	Department Need to Purchase. The character of the Goods or Services the Department is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. The Department's description of its need to purchase must:
47-0255 1 j (A) **Add**	Identify the scope of the work to be performed under the Contract, if the County awards one;
47-0255 1 j (B) **Add**	Outline the anticipated duties of the Contractor under the Contract;
47-0255 1 j (C) **Add**	Establish the expectations for the Contractor's performance under the Contract; and
47-0255 1 j (D) **Add**	Require in the scope of work, unless the Department for Good Cause specifies otherwise, that the Contractor meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Department is purchasing.

47-0255 1 k (B) **Add**	Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, ~~such~~ the evaluation factors shall be reasonable estimates of actual future costs based on information the Department has available concerning future use; and
47-0255 1 m **Add**	All ~~contract terms and conditions including a provision indicating whether the Contractor can assign the contract, delegate it's duties, or subcontract the delivery of the Goods or Services without prior Written approval from the County; and~~ contractual terms and conditions in the form of Contract provisions the Department determines are applicable to the Procurement including terms and conditions specifying the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:
47-0255 1 m (A) **Add**	The County's right to reduce or withhold payment under the Contract;
47-0255 1 m (B) **Add**	The County's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the Contract; and
47-0255 1 m (C) **Add**	The County's rights, which the County may assert individually or in combination, to declare a default of the Contract, to terminate the Contract, and to seek damages and other relief available under the resulting Contract or applicable law.
47-0260 2 e **Modify**	Department Need to Purchase. The character of the Goods or Services the Department is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. The Department's description of its need to purchase must:
47-0260 2 e (A) **Add**	Identify the scope of the work to be performed under the Contract, if the County awards one;
47-0260 2 e (B) **Add**	Outline the anticipated duties of the Contractor under the Contract;
47-0260 2 e (C) **Add**	Establish the expectations for the Contractor's performance under the Contract; and
47-0260 2 e (D) **Add**	Require in the scope of work, unless the Department for Good Cause specifies otherwise, that the Contractor meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Department is purchasing.
47-0260 2 i **Modify**	~~Contractor's~~ Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with Rule 46-0210(3);

47-0260 2 r **Modify**	All ~~contractual terms and conditions applicable to the Procurement, including Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the Goods or Services without prior Written approval from the County, and:~~ contractual terms and conditions in the form of Contract provisions the Department determines are applicable to the Procurement including terms and conditions specifying the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:
47-0260 2 r (A) **Modify**	The County's right to reduce or withhold payment under the Contract;
47-0260 2 r (B) **Modify**	The County's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the Contract; and
47-0260 2 r (C) **Modify**	The County's rights, which the County may assert individually or in combination, to declare a default of the Contract, to terminate the Contract, and to seek damages and other relief available under the resulting Contract or applicable law.
47-0260 3 a **Add**	Identify contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the Contract;
47-0260 3 b **Add**	Specify that it will include or use a Proposer's terms and conditions that have been pre-negotiated under Rule 47-0550;
47-0260 12 **Add**	No terms and conditions shall be included in the Contract that were expressly rejected in a solicitation protest.
47-0260 13 **Add**	For multiple Award Contracts, the County may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions.
47-0261 1 **Modify**	Generally. A Department may procure Goods or Services employing any combination of the methods of Contractor selection as set forth in Rule 47-0260. In addition to the procedures set forth in Rules 47-0300 to 47-0490 for methods of Contractor selection ~~that call~~ a Contracting Agency may provide for a multi-tiered or multi-step selection process that permits award to the highest ranked Proposer at any tier or step, calls for the establishment of a Competitive Range or permits either serial or competitive simultaneous Discussions or Negotiations, ~~or include a~~ with one or more Proposers. A Department ~~shall~~ may employ ~~the~~ one or more of the procedures set forth in this Rule for Competitive Range, multi-tiered and multi-step Proposals.
47-0262 **Modify**	**Competitive Range, Discussions and Negotiations for Multi-tiered or Multistep Proposals**

47-0262 1 a (A) **Add**	Notwithstanding the foregoing, a Department may establish a Competitive Range of all Proposers to enter into discussions with Proposers for the purpose of correcting deficiencies in Proposals under subsection 2 of this rule.
47-0262 1 a (B) **Add**	The Department may increase or decrease the number of Proposers in the Competitive Range if the Department's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater or less than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the most Advantageous Proposer. ~~The Department may decrease the number of Proposers in the initial Competitive Range only if the excluded Proposers have no reasonable chance to be the most Adventageous Proposer.~~
47-0262 1 c (A) ii **Modify**	After the protest period provided in accordance with Rule 47-0740 expires, or after the County has provided a final response to any protest, whichever date is later, the Department shall commence Negotiations in accordance with subsection (3) of this Rule with ~~Proposers~~ the highest-ranked Proposer in the Competitive Range; or
47-0262 2 a **Modify**	**Initiating Discussions**. The Department shall initiate oral or Written Discussions with all ~~Proposers submitting Responsive Proposals or all Proposers in the Competitive Range~~ ~~(collectively~~ eligible Proposers regarding their Proposals with respect to the provisions of the RFP that the Department identified in the RFP as the subject of Discussions. The Department may conduct Discussions for the following purposes:
47-0262 3 b (B) **Modify**	Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the Department reasonably believes that:
47-0262 3 b (B) i **Modify**	The eligible Proposer is not discussing or negotiating in good faith; or
47-0262 3 b (B) ii **Modify**	Further Discussions or Negotiations with the eligible Proposer will not result
47-0262 3 c **Modify**	**Continuing Serial Negotiations**. If the Department is conducting serial Negotiations and the Department terminates Negotiations with ~~a~~ an eligible Proposer in accordance with paragraph 3(b)(B) of this Rule, the Department may then commence Negotiations with the next highest scoring eligible Proposer ~~in the Competitive Range~~, and continue the process described in subsection (3) of this Rule until the Department has either:
47-0262 3 c (A) **Modify**	Determined to recommend Award of the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or
47-0262 3 c (B) **Modify**	Completed one round of Discussions or Negotiations with all eligible Proposers ~~in the Competitive Range~~, unless the Department
47-0262 3 d **Modify**	competing eligible Proposers. The Department:

47-0262 3 d (A) **Modify**	Shall treat all ~~Proposers~~ eligible Proposers fairly and shall not favor any ~~Proposers~~ eligible Proposers over another;
47-0262 3 d (B) **Modify**	May disclose other ~~Proposer's~~ eligible Proposer's Proposals or the substance of Negotiations with other ~~Proposers~~ eligible Proposers only if the CPCA Manager notifies all of the ~~Proposers~~ eligible Proposers with whom the Department will engage in Negotiations of the Department's intent to disclose before engaging in Negotiations with any ~~Proposer~~ eligible Proposer.
47-0262 4 **Modify**	Best and Final Offers. If best and final Offers are required, CPCA shall establish a common date and time by which ~~Proposer~~ eligible Proposers shall submit best and final Offers. Best and final Offers shall be submitted only once; provided, however, the Department may make a Written determination that it is in the Department's best interest to conduct additional Discussions, Negotiations or change the Department's requirements and require another submission of best and final Offers. Otherwise, no Discussion of or changes in the best and final Offers shall be allowed prior to Award. ~~Proposers~~ eligible Proposers shall also be informed if they do not submit notice of withdrawal or another best and final Offer,
47-0270 4 **Add**	Negotiations. A Department may negotiate with a prospective Contractor who offers to provide Goods or Services in response to an intermediate Procurement to clarify its quote or Offer or to effect modifications that will make the quote or Offer more Advantageous to the County.
47-0300 1 a **Modify**	Mailing or e-mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in County Procurements;
47-0310 1 b **Modify**	Where negotiation is permitted by the rules or the Solicitation Document, Proposers are ~~bound to an obligation~~ obligated to negotiate in good faith and only on those terms or conditions that the rules or the Solicitation Document have reserved for negotiation.
47-0310 3 **Modify**	If the Request for Proposals permits ~~Proposal~~ proposers to propose alternative terms or conditions under Rule 47-0262, the Offeror's Offer includes ~~the~~ any nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the County in Writing and the Offeror's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work.
47-0470 2 b **Modify**	Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). Unit prices shall prevail over extended prices ~~In the event of a discrepancy, unit~~ in the event of a discrepancy between extended prices and unit prices.
47-0550 **Modify**	**Prequalification of Prospective Offerors; Pre-negotiation of Contract Terms and Conditions**

47-0550 5 **Add**	After consultation with the County Attorney, a Department may pre-negotiate some or all Contract terms and conditions including prospective Proposer Contract forms such as license agreements, maintenance and support agreements or similar documents for use in future Procurements. Such pre-negotiation of Contract terms and conditions (including prospective Proposer forms) may be part of the prequalification process of a Proposer under this Rule or the pre-negotiation may be a separate process and not part of a prequalification process. Unless required as part of the prequalification process, the failure of the Department and a prospective Proposer to reach agreement on pre-negotiated Contract terms and conditions does not prohibit the prospective Proposer from responding to Procurements. A Department may agree to different pre-negotiated Contract terms and conditions with different prospective Proposers. When a Department has pre-negotiated different terms and conditions with Proposers or when permitted, Proposers offer different terms and conditions, a Contracting Agency may consider the terms and conditions in the Proposal evaluation process.
47-0600 2 **Modify**	**Clarification of Bids or Proposals**. After ~~Bid~~ Opening, the County may conduct Discussions with apparent Responsive ~~Bidders~~ Offerors for the purpose of clarification to assure full understanding of the ~~Bid~~ Bids or Proposals. All Bids or Proposals, in the Department's sole discretion, needing clarification shall be accorded such an opportunity. CPCA shall document clarification of any Bidder's Bid in the Procurement File.
47-0600 3 **Modify**	**Negotiations ~~Prohibited~~.**
47-0600 3 a **Modify**	**Bids**. ~~Except as permitted by subsection (2) of this Rule, the~~ The County shall not negotiate with any Bidder. After Award of the Contract, the Department and Contractor may only modify the Contract in accordance with Rule 47-0800.
47-0600 4 c (A) **Modify**	Notwithstanding subsection 4(a) of this Rule, CPCA may Award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. Multiple Awards shall not be made if a single Award will meet the Department's needs, including but not limited to adequate availability, delivery, service, or product compatibility and skills.
47-0600 4 d (B) **Modify**	If a Request for Proposals permits the Award of multiple Contracts, the County shall specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services which may include consideration and evaluation of the Contract terms and conditions agreed to by the Proposers.
47-0640 1 c (F) i **Modify**	Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the ~~capability of the Offeror to~~ meet all contractual responsibilities; ~~and~~
47-0640 1 c (F) ii **Modify**	Has ~~A satisfactory record of contract performance.~~ completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner.
47-0640 1 c (F) iii **Modify**	The standards for Debarment under Rule 47-0575 may be used to determine an Offeror's integrity. An Offeror may be found to be nonresponsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The CPCA Manager shall make the basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement File;

47-0640 1 c (F) iv **Modify**	Is legally qualified ~~legally~~ to contract with the County; and
47-0800 **Modify**	**~~Contract~~ Amendments to Contracts and Price Agreements**
47-0800 1 d **Modify**	For contracts in excess of $150,000, increases in excess of the 20 percent limit shall be submitted to the CPCA Manager to obtain approval by the Board prior to authorization for the additional Goods or services. Escalation clauses showing cost of living increases over the life of the contract are excluded from the 20% limitation if the escalation was part of the original solicitation and contract.
47-0800 1 e **Modify**	~~Escalation clauses showing cost of living increases over the life of the contract are excluded from the 20% limitation if the escalation was part of the original solicitation and contract.~~ Every Contract for Goods, Services and Public Works that are not Public Improvements, including emergency contracts, shall comply with the requirements of this Rule ~~including Contracts advertised, or if not advertised, entered into prior to March 1, 2005~~.
47-0800 5 b **Modify**	As permitted by this Rule; ~~or~~
47-0800 5 c **Modify**	~~If the circumstances set forth in ORS 279B.140(2) exist.~~ The County fails to receive funding, appropriations, limitations, allotments or other expenditure authority, including the continuation of program operating authority sufficient, as determined in the discretion of the County, to sustain purchases at the levels contemplated at the time of contracting;
47-0800 5 d **Add**	Any change in law or program termination that makes purchases under the price agreement no longer authorized or appropriate for the County's use; or
47-0800 5 e **Add**	As otherwise permitted by applicable law.

DIVISION 48	
48-0130 **Modify**	**Disclosure of Proposals; Conflicts of Interest**
48-0130 1 **Modify**	Proposals may be opened so as to avoid disclosure of contents to competing proposers during, when applicable, the process of negotiation. Proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued or, in the case of selection under Rule 48-0200, until after the Department has made the decision to begin contract negotiations with the selected consultant.
48-0130 2 **Modify**	~~Proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued or, in the case of selection under Rule 48-0200, until after the Department has made the decision to begin contract negotiations with the selected consultant.~~ Notwithstanding any requirement to make proposals open to public inspection after the issuance of notice of intent to award a contract (or, in the case of selection under Rule 48-0200, until after the Department has made the decision to begin contract negotiations with the selected consultant) CPCA may withhold from disclosure to the public trade secrets, as defined in ORS 192.501, and information submitted to a public body in confidence, as described in ORS 192.502, that are contained in a proposal. If a request for proposals is canceled after proposals are received, CPCA may return a proposal to the proposer that made the proposal. CPCA shall keep a list of returned proposals in the file for the solicitation
48-0130 3 **Add**	Except as provided in subsections (4) and (5) below, a Department that procures Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract that is subject to these Rules may not:
48-0130 3 a **Add**	Procure the Personal Services from a contractor or an affiliate of a contractor who is a party to the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services; or
48-0130 3 b **Add**	Procure the personal services through the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services.
48-0130 4 **Add**	Subsection (3) of this section does not apply to a Procurement of both design services and construction services through a single "Design-Build" Procurement as defined in Rule 49-0610 including a Procurement of an Energy Savings Performance Contract, provided, however, the restrictions in subsection (3) do apply to a Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement.
48-0130 5 **Add**	Subsection 3 of this section does not apply to a Procurement of both pre-construction services and construction services through a single "Construction Manager/General Contractor" Procurement, as defined in Rule 49-610as defined in OAR 137-049-0610. Provided, however, the restrictions of subsection 3 do apply to a Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Contract or performance under such a Contract resulting from a Construction Manager/General Contractor Procurement.

48-0200 1c(B) **Modify**	The Department used either the Formal Selection Procedure under Rule 48-0220 or the Informal Selection Procedure applicable to selection of the Consultant at the time of original selection, to select the Consultant for the earlier Contract.
48-0200 5 b **Modify**	Payment methodology and a maximum amount payable to ~~Contractor~~ the Consultant for the Architectural, Engineering, Land Surveying or Related Services required under the
48-0220 9 b **Modify**	Payment methodology and a maximum amount payable to ~~Contractor~~ the Consultant for the Architectural, Engineering, Land Surveying or Related Services required under the
48-0320 2 **Modify**	The County may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies ~~that~~ which affect performance of the original Contract.
DIVISION 49	
49-0200 1 b (A) **Modify**	A statement that the County may reject any Offer not in compliance with all prescribed public contracting procedures and requirements including the requirement to demonstrate the Bidder's responsibility under Rule 49-0390(2), and may reject for good cause all Offers ~~upon the County's~~ after finding that ~~it~~ doing so is in the public interest ~~to do so~~;
49-0200 1 c (O) **Modify**	~~Fee paid to BOLI (ORS 279C.830);~~ BOLI Public Works bond (ORS279C.830 (3)
49-0200 **Modify**	Stat. Auth.: ORS 279A.065 Stats. Implemented: ORS 279A.110, ORS 279A.120, ORS 279C.365, ORS 279C.370, ORS 279C.375 ORS 279C.390, ORS 279C.505 to 580, ORS 279C.605, 279C.830, ORS 305.385, ORS 468A.720, ORS 701.005 & ORS 701.055
49-0330 3 **Modify**	**Availability.** After Opening, CPCA shall make Bids available for public inspection, but Proposals shall not be ~~subject to disclosure~~ required to be available for public inspection until after notice of intent to Award is issued.
49-0350 2 b **Modify**	price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). ~~In the event of a discrepancy, unit~~ Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit prices.
49-0390 1 **Modify**	**General.** If Awarded, the CPCA Manager shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract or is ineligible for Award as a nonresident ~~as defined in ORS279A.120~~ education service district (ORS 279C.325).
49-0390 2 b **Modify**	Has ~~a satisfactory record of contract performance~~ completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner.

49-0390 2 c **Modify**	The standards for Conduct Disqualification under Rule 49-0370 may be used to determine an Offeror's integrity. An Offeror may be found to be nonresponsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract.
49-0390 2 d **Modify**	Is legally qualified ~~legally~~ to contract with the County; and
49-0390 **Modify**	Stat. Auth.: ORS 279A.065, Oregon Laws 2005, chapter 413 Stats. Implemented: ORS 279C.325, ORS 279C.335, ORS 279C.365, ORS 279C.375 & ORS 279C.395
49-0645 **Modify**	The County shall first advertise and provide notice of the RFQ in the same manner as required in Rule 49-0210. The RFQ shall provide that RFPs will be distributed only to the firms ~~qualified~~ selected in the RFQ process. The RFQ shall also provide for a protest provision substantially the same as that described in Rule 49-0450 (5) regarding protest of the competitive range. After the RFQ process is completed the County may distribute the RFP to ~~those~~ the selected firms without further advertisement of the solicitation.
49-0800 **Modify**	Departments shall include in all formal Solicitations Documents for Public Improvement Contracts all of the ORS Chapter 279C required Contract clauses, as set forth in the checklist contained in Rule 49-0200(1)(c) regarding Solicitation Documents.
49-0815 **Modify**	Pursuant to ORS 279C.830~~(3)~~(2), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor shall have a Public Works bond filed with
49-0820 2 **Add**	Form of Retainage. Unless a Contracting Agency that reserves an amount as retainage finds in writing that accepting a bond or instrument described in part (a) or (b) of this section poses an extraordinary risk that is not typically associated with the bond or instrument, the Contracting Agency, in lieu of withholding moneys from payment, shall accept from the Contractor:
49-0820 2 a **Add**	Bonds, securities or other instruments that are deposited and accepted as provided in subsection (4)(a) of this rule; or
49-0820 2 b **Add**	A surety bond deposited as provided in subsection (4)(b) of this rule.
49-0820 4 a **Modify**	Deposit of bonds, securities or other instruments:
49-0820 4 a (A) **Modify**	The Contractor may deposit bonds ~~or~~, securities or other instruments with the County or in any bank or trust company to be held for the benefit of the County. ~~In such event~~ If the County accepts the deposit, the County shall reduce the cash Retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

49-0820 4 a (B) **Modify**	Bonds ~~and~~, securities or other instruments deposited or acquired in lieu of cash Retainage ~~shall~~ must be of a character approved by the County Chief Financial Officer and may include, without limitation:
49-0820 4 a (B) ii **Modify**	Other obligations of the United States or ~~its Agencies~~ agencies of the United States.
49-0820 4 a (B) iii **Modify**	Obligations of ~~any~~ a corporation wholly owned by the Federal Government.
49-0820 4 a (B) v **Add**	General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.
49-0820 4 a (B) vi **Add**	Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.
49-0820 5 **Modify**	Recovery of costs. The County may recover from the Contractor all costs incurred in the proper handling of ~~cash~~ Retainage, ~~and securities~~ by reduction of the final payment.
DIVISION 55	
NONE	
DIVISION 60	
NONE	

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Adopting Revised Multnomah County Public Contract Review Board Rules Effective January 21, 2010

The Multnomah County Board of Commissioners Finds:

a. The most recent version of the Multnomah County Public Contract Review Board (PCRB) Rules was adopted effective May 1, 2009. The PCRB Rules are based on the Attorney General Model Contract Rules (AG Model Rules). The AG Model Rules are, in turn, are based on ORS Chapters 279A, 279B and 279C.

b. Central Procurement and Contract Administration Policy Memorandum P104 requires a periodic review of the PCRB Rules to incorporate any required changes that have occurred and ensure the document reflect current and optimal business practice.

c. The proposed rules will become effective on January 21, 2010.

d. It is in the best interests of Multnomah County to adopt the proposed revision to the PCRB rules in lieu of the Attorney General Model Rules.

The Multnomah County Board of Commissioners Resolves:

1. The Board adopts the rules attached as Exhibit 1 as the Public Contract Review Board Rules for Multnomah County effective January 21, 2010. The Attorney General Model Rules provided for in ORS 279A.065 do not apply to Multnomah County.

ADOPTED this 21st day of January 2010.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

_____
Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By_____
John S. Thomas, Deputy County Attorney

SUBMITTED BY:
Brian R. Smith, Acting Purchasing Manager, CPCA

MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST

(Revised 12/31/09)

Board Clerk Use Only	
Meeting Date:	01/21/2010
Agenda Item #:	R-2
Est. Start Time:	9:35 AM
Date Submitted:	12/13/2010

Agenda Title: **RESOLUTION Approving an Exemption to Increase the Contract Amount with Gibson Builders LLC for Inverness Jail Dorm Shower Water Proofing Project**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title sufficient to describe the action requested.

Requested Meeting Date:	January 21, 2010	**Amount of Time Needed:**	5 minutes
Department:	County Management	**Division:**	CPCA (on behalf of FM)
Contact(s):	Brian Smith (CPCA)		
Phone:	503 209-2843 **Ext.** 24173	**I/O Address:**	503/4/CPCA
Presenter(s):	Brian Smith (CPCA), John Lindenthal (FM)		

General Information

1. **What action are you requesting from the Board?**

   Request to approve contract amendment exceeding the 33 percent limit for renovation project.

2. **Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

   The County awarded a contract to Gibson Builders LLC for the Inverness Jail Dorm Shower Improvements project CP08.09.45 to repair leaking showers. Material defects in the original shower were discovered after the first shower was demolished. The revised contract price exceeds the 33 percent allowable limit for renovation projects. A budget modification was approved by the Board on October 22, 2009. Authorization to increase the contract value more than 33 percent was overlooked and not included with that request.

3. **Explain the fiscal impact (current year and ongoing).**

   Funding in the amount of $230,000 was transferred from the Justice Center Cell Window Replacement Project as approved by the Board on October 22, 2009.

4. **Explain any legal and/or policy issues involved.**

   This request satisfies requirements of PCRB Rule 49-0910 to allow contract amendments in excess of the dollar limits.

5. Explain any citizen and/or other government participation that has or will take place.

n/a

Required Signature

Elected Official or Department/ Agency Director: Mindy Hanna **Date:** 01/07/2010

MULTNOMAH COUNTY OREGON
Facilities and Property Management
401 North Dixon
Portland, Oregon 97227
(503) 988-3322 phone
(503) 988-5082 fax

DATE: November 25, 2009

TO: Public Contract Review Board
Multnomah County Oregon

FROM: Michael Andersen, Project Manager
Facilities and Property Management

SUBJECT: **REQUEST APPROVAL TO AMEND CONTRACT NUMBER 4600007855 WITH GIBSON BUILDERS LLC FOR FOR DORM SHOWER WATER PROOFING PROJECT**

General

Facilities and Property Management requests the Public Contract Review Board to approve contract amendment to contract number 460007855 with Gibson Builders LLC for the purpose of adding funding for Dorm Shower Waterproofing and repairs at Inverness Jail. Fiscal year FY09: No overall fiscal impact. Multnomah County Inverness Jail Shower project (CP08.09.45) in the amount of $230,000. Funding was transferred from the Justice Center Cell Window Replacement Project.

Background

The Multnomah County Inverness Jail Dorm Shower Improvements project CP08.09.45 was to fix the leaking showers in this facility. The original plan was to resurface the existing shower units. As the first shower unit was demolished, there appeared to be other issues that raised suspicions on the original construction. Therefore, all three construction phases were core drilled to determine the existing condition of the showers. Only the first construction phase had pan liners installed and all three phases of construction had no vapor barrier installed under original concrete slab. This was a hidden condition that would not have been anticipated. The above described work is in addition to what was originally budgeted for. The original budget was for removal of old coating or tile and the application of the new Polyspec system. There will be a unbudgeted MCSO escort fee of approximately $29000.00; escort are being utilized to allow general contractor to dispose of demolition materials from Dorm Shower areas.

A solution to rectify this condition was developed. The proposal is to only do the most critical showers at this time.

A follow-on project will be developed to repair the rest of the facilities dorm showers. The original budget was for removal of old coating or tile and the application of the new Polyspec system. The costs to do Dorm shower units (2 thru 11) will cost an additional $230,000. This includes an unbudgeted MCSO escort fee of approximately $29,000. Escorts are being utilized to

allow general contractor to dispose of demolition materials from Dorm Shower areas.

Note: The cost to do all 18 Dorm Shower Units would be $733,000 this is an additional $484,000 to current budget. This includes Project Management time and MCSO Escort fees. With original budget we only have enough funding to address 4.5 Dorms. All of the above estimates include MCSO escort services and project management costs.

Scope of Services and Estimated Cost

A solution to rectify this condition was developed.

A Schluter Shower Liner was recommended by our contractor (Gibson Builders) which would eliminate the need to remove two previously poured grout beds in order to have a conventional pan liner installed. This Schluter Shower Liner will be installed over the existing smoothed and repaired bare grout beds, walls, ceiling and also in the walk off areas. Then it will receive a thin coat mortar (sacking) and then be topped with thick coating of Fiberglass which serves as the substrate for the Polyspec coating. In order to have the new Schluter Shower Liner work the way it was intended the drains will have to be cut out and regrouted once the new liner has been put in place. This process will assure that the new coating will not peel, it will keep concrete mortar bed dry and also keep moisture out of adjacent Plumbing Chases.

Multnomah County Inverness Jail Shower project (CP08.09.45) in the amount of $230,000.transfer. This will change the total FY09 project budget authorization from $255,780 to $485,780.

Summary

This letter requests authorization to exceed the original contract amount by more than 33%. The contract total will become $408313 or 231% higher than the original contract balance ($177097) and now requires Public Contract Review Board Approval to proceed. Adequate funding exists in the program budget to perform the additional work. Contractor is already on site performing work. Prudent contract management and construction practices dictate that the additional work would best performed in conjunction with the original contract work and permit; plus the contract establishes the method of arriving at the price for the additional work with the least disruption to Inverness Jail operations.

Facilities and Property Management believes it to be in the best interest of Multnomah County and the public to approve this amendment to the contract for project completion for the reasons stated above.

Please contact Michael Andersen, Project Manager, at extension 83181 if additional information is required.

MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST (long form)

Board Clerk Use Only	
Meeting Date:	
Agenda Item #:	
Est. Start Time:	
Date Submitted:	

BUDGET MODIFICATION: PROJECT REALLOCATION: FPM 10-01

Agenda Title:	**Reallocation of Facilities Capital Project Funds FPM 10-01, Justice Center Jail Shower Repair Project (CP08.08.62); and Multnomah County Inverness Jail (MCIJ) Dorm Shower Improvements project (CP08.09.45).**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title.

Requested Meeting Date:	October 22, 2009	**Amount of Time Needed:**	10 minutes
Department:	County Management	**Division:**	FPM
Contact(s):	John Lindenthal, Gail Hochhalter, Mike Andersen		
Phone:	503-988-4213 **Ext.** x84213	**I/O Address:**	274/1
Presenter(s):	John Lindenthal, Capt. Rai Adgers		

General Information

1. What action are you requesting from the Board?

Requested action is to transfer budget expenditure authority from the Justice Center Cell Window Replacement ($338,000) project to the following projects:

1. Justice Center Shower Repair project (CP08.08.62) in the amount of $108,000. This will change the total FY10 project budget authorization from $281,600 to $389,600.
2. Multnomah County Inverness Jail Shower project (CP08.09.45) in the amount of $230,000.transfer. This will change the total FY10 project budget authorization from $255,800 to $485,800.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

The Board included the following Budget Note in the FY05 Adopted Budget. No reallocation of funds from capital or maintenance projects shall occur without review and approval from the Chief Financial Officer. Projects that will exceed their budgeted

appropriation in excess of five percent up to $25,000 will need to be approved by the Chief Financial Officer; over $25,000 will need to be brought back to the Board for approval. Facilities shall report to the Board on a semi-annual basis the progress of capital projects and the financial status of capital and maintenance projects." This filing is in response to that requirement and complies with the new County Administrative Procedure, Fin-15, created to implement this process.

The Justice Center shower project was awarded in April 2009 and the contract signed May 20, 2009. Sixteen showers have been upgraded as of September 1, 2009 with 34 more to finish. The initial completion was early December 2009. Soon after July 1,2009 the MSCO informed us that they could no longer provide us full access to a complete floor resulting in cost impacts to the project due to labor inefficiencies ($18,000 x Floors 5, 6, and 8 = $54,000). The expected completion date is now April 2010. The extended schedule increases architectural fees and project management costs approximately $16,000. To compound budget woes, the plumbing portion of the work which was contracted separately was underestimated and actual costs have quadrupled – primarily due to the need to conduct a major portion of the work during off-hours ($38,000). Total project impact is an additional $108,000. New FY10 project total will be $389,600 with this change.

The Multnomah County Inverness Jail Dorm Shower Improvements project original plan was to resurface or replace the existing shower units. The original scope of work and budget was developed based on removal of old coating or tile and the application of the new Polyspec system. As the first shower unit was demolished, other issues were discovered that raised suspicions on the original construction. As a consequence, all three construction phases were core drilled to determine the existing condition of the showers. Only the first construction phase had pan liners installed. This was a hidden condition and was not anticipated. A solution to correct this condition was developed. The proposal is to only do the most critical showers at this time. A follow-on project will be developed to repair the rest of the facilities dorm showers. The additional cost is approximately $14,000 per dorm. Therefore, construction repairs on dorm shower units (2 thru 11) will be an additional $141,000. Escorts are being utilized to allow general contractor to dispose of demolition materials from Dorm Shower areas. Increases in project management, MCSO escort costs and maintaining a small contingency are estimated at $89,000. Total project impact is an additional $230,000. New FY10 project total will be $485,800 with this change.

Note: The cost to do all 18 Dorm Shower Units would be an additional $484,000 for a project total of $733,000.

3. Explain the fiscal impact (current year and ongoing).

Fiscal year FY09: No overall fiscal impact. Transfer budget expenditure authority from the Justice Center Cell Window Replacement ($338,000) project to the following projects:

1. Justice Center Shower Repair project (CP08.08.62) in the amount of $108,000.
2. Multnomah County Inverness Jail Shower project (CP08.09.45) in the amount of $230,000.

4. **Explain any legal and/or policy issues involved.**

None.

5. **Explain any citizen and/or other government participation that has or will take place.**

None.

ATTACHMENT A

Budget Modification

If the request is a Budget Modification, please answer all of the following in detail:

- **What revenue is being changed and why?**
  N/A
- **What budgets are increased/decreased?**
  No budget change except at project level.
- **What do the changes accomplish?**
  N/A
- **Do any personnel actions result from this budget modification? Explain.**
  No.
- **How will the county indirect, central finance and human resources and departmental overhead costs be covered?**
  N/A
- **Is the revenue one-time-only in nature? Will the function be ongoing? What plans are in place to identify a sufficient ongoing funding stream?**
  N/A
- **If a grant, what period does the grant cover?**
  N/A
- **If a grant, when the grant expires, what are funding plans?**
  N/A

Contingency Request

If the request is a Contingency Request, please answer all of the following in detail:

- **Why was the expenditure not included in the annual budget process?**
- **What efforts have been made to identify funds from other sources within the Department/Agency to cover this expenditure?**
- **Why are no other department/agency fund sources available?**
- **Describe any new revenue this expenditure will produce, any cost savings that will result, and any anticipated payback to the contingency account. What are the plans for future ongoing funding?**
- **Has this request been made before? When? What was the outcome?**

NOTE: If a Budget Modification or a Contingency Request attach a Budget Modification Expense & Revenues Worksheet and/or a Budget Modification Personnel Worksheet

Grant Application/Notice of Intent

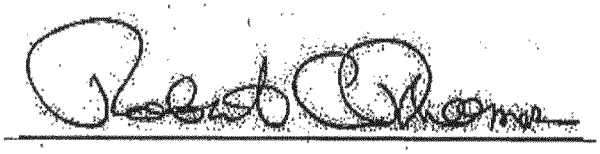
If the request is a Grant Application or Notice of Intent, please answer all of the following in detail:

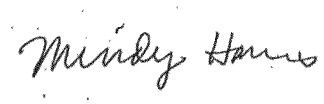
- **Who is the granting agency?**
- **Specify grant (matching, reporting and other) requirements and goals.**
- **Explain grant funding detail – is this a one time only or long term commitment?**
- **What are the estimated filing timelines?**
- **If a grant, what period does the grant cover?**
- **When the grant expires, what are funding plans?**
- **How will the county indirect, central finance and human resources and departmental overhead costs be covered?**

ATTACHMENT B

BUDGET MODIFICATION: PROJECT REALLOCATION: FPM 10-01

Required Signatures

Facilities and Property Management Director:  **Date:** 10/8/09

Chief Financial Officer:  **Date:** 10/7/09

Budget Director: _____ **Date:** _____

Pi tReallocation Formal Board Approval: FPM10-01

EXPENDITURES & REVENUES

Please Show all Increase in revenue as a negative value and decrease as a positive value for consistency with MERLIN

Line No.	Fund Center	Fund Code	Accounting Unit: Formal FPM	Accounting Unit: Cost Center	Accounting Unit: WBS Element	Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
1	72-50	2507			CP08.08.57	60530	(377,700)	(39,700)	338,000		B119 JC-Cell Window Replace
2	72-50	2507			CP08.08.62	60530	(281,600)	(389,600)	(108,000)		B119 JC-Showers Repairs
3	72-50	2507			CP08.09.45	60530	(255,800)	(485,800)	(230,000)		B 314 Additional Dorm Showers
4											
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									0	0	Total - Page 1
									0	0	GRAND TOTAL

WALTERS Nancy R

From: KINOSHITA Carol

Sent: Wednesday, January 06, 2010 3:50 PM

To: BOGSTAD Deborah L; RINEHART Tom

Cc: SMITH Brian D; NUNLEY Bernadette D; WALTERS Nancy R; ZIMMERMAN Barry M; THOMAS John S

Subject: FW: Board Exemption Documents-Gibson Builders LLC

Here's a resolution that John has approved for the 1/21 meeting. We understand the APR and other documentation will be or has been submitted to you. Thanx!

Carol

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Approving an Exemption to Increase the Contract Amount with Gibson Builders LLC for Inverness Jail Dorm Shower Water Proofing Project

The Multnomah County Board of Commissioners Finds:

a. The Board is acting as the Multnomah County Public Contract Review Board (PCRB) to review, pursuant to PCRB Rule 49-0910, an exemption request from the Department of County Management, Facilities and Property Management Division, to increase the amount of the contract with Gibson Builders beyond the 33 percent limit for Multnomah County Inverness Jail Dorm Showers Water Proofing Project.

b. The County awarded a contract with Gibson Builders for the Inverness Jail Dorm Shower Improvements project CP08.09.45 to repair leaking showers. The original plan called for resurfacing; however, material defects in the original construction were discovered after the first shower was demolished. These defects, which were hidden and unanticipated, include missing pan liners and no vapor barrier installed under the original concrete slab. The proposed solution to rectify this condition is to repair only the most critical showers at this time. A follow-on project will be developed to repair the remaining showers.

c. The cost to repair all 18 showers is estimated at $733,000. The original contract with Gibson Builders to waterproof all 18 showers was $177,097, which only repairs 4.5 showers with the additional work. The revised contract cost to repair the 10 most critical showers is $408,313, representing a 231 percent increase in the contract price. Because the Board approved budget reallocation request FPM 10-01 in October, adequate funding exists in the program budget to perform the additional work.

d. The additional work is within the general scope of the original contract as defined by PCRB Rule 49-0910(2) because it is logically related to the contract work. Prudent contract management and construction practices dictate that the additional work ought to be performed in conjunction with the original contract work; the additional work is located at the same site as the original contract work; and the contract objectively establishes the price for the additional work. The contractor was selected through a formal competitive process therefore it is not likely that the field of competition will be affected by the proposed contract amendment.

e. This exemption request is in accord with the requirements of PCRB Rule 49-0910.

The Multnomah County Board of Commissioners Resolves:

1. The exemption to increase the amount of Contract No. 4600007855 with Gibson Builders LLC to $408,313 for the Inverness Jail Dorm Shower Improvement Project is approved.

ADOPTED this 21st day of January, 2010.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

_____
Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By_____
John Thomas, Deputy County Attorney

SUBMITTED BY:
Mindy Harris, DCM Director

MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST

(revised 12/31/09)

Board Clerk Use Only	
Meeting Date:	01/21/2010
Agenda Item #:	R-3
Est. Start Time:	9:40 AM
Date Submitted:	01/07/2010

Agenda Title: **First Reading of a Proposed ORDINANCE Amending the Sauvie Island Multnomah Channel Rural Area Plan Map to Note Exceptions to State Land Use Goals**

Note: If Ordinance, Resolution, Order or Proclamation, provide exact title. For all other submissions, provide a clearly written title sufficient to describe the action requested.

Requested Meeting Date:	January 21, 2010	**Amount of Time Needed:**	20 minutes
Department:	Community Services	**Division:**	Land Use & Transportation
Contact(s):	Joanna Valencia		
Phone:	503 988-3043 **Ext.** 29637	**I/O Address:**	455/116
Presenter(s):	Joanna Valencia		

General Information

1. **What action are you requesting from the Board?**

   The action requested is to adopt the ordinance consistent with the recommendation by the County Planning Commission to approve the request for exception to Statewide Planning Goals 11 and 14 to increase the number of floating homes at the Rocky Pointe Marina and to deny the Special Plan Area zone change request to exceed the residential density limit in county code of one floating home per fifty feet of waterfront property. This land use action is being processed as a Type IV action in which the Planning Commission recommendation is forwarded to the Board for final decision.

2. **Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

   The owners of the Rocky Pointe Marina are requesting exceptions to statewide planning Goals 14 (Urbanization) and 11(Public Facilities and Services) to add 36 additional floating homes to the existing marina in which 40 floating homes are currently allowed. A Special Plan Area zone change has also been requested to expand the marina beyond the allowed one floating dwelling per fifty feet of waterfront. (Multnomah County Code (MCC) 34.6755).

   Rocky Pointe Marina was originally approved by Multnomah County in 1993 as a Conditional Use (Permits CS 1-93, HV 1-93, WRG 1-93 and CU 7-93). These permits approved 40 houseboats (i.e.

floating homes), 150 boat slips, 7 boathouse spaces and 166 parking spaces. The zoning of the subject property is Multiple Use Agriculture-20 with zoning overlays for the 100-year floodplain, the Willamette River Greenway and for wetlands designated on the National Wetlands Inventory.

The applicant is requesting exceptions to Goals 14 (Urbanization) and 11(Public Facilities and Services). The exceptions will allow urban levels of residential development outside an Urban Growth Boundary, contrary to County Comprehensive Framework Plan Policy 6 for Urban Land Area, and Policy 10 which calls for rural scale development on Multiple Use Agriculture designated lands. Oregon Revised Statutes (ORS) 197.732 outline the three options for an exception to any statewide planning goal referred to as a "physically developed", "irrevocably committed" and, a "Reasons" exception. The applicant is requesting a "physically developed" and "irrevocably committed" exception to both goals pursuant to the procedures of ORS 197.732(1)(a) and (b). The "Reasons" criteria of ORS 197.732(1)(c) are not applicable to this request.

Goal 14 and Goal 11 prohibit urban densities and services such as sewer and water outside an Urban Growth Boundary (UGB). Goal 14 limits rural development outside of the UGB to one single family dwelling per parcel. Due to this limitation, an exception to this goal is required to add additional houseboats (dwellings) to the subject property. Goal 11 prohibits urban services such as public sewer and municipal water systems outside of a UGB. An exception to this goal is needed since the proposed development would be served by urban services for both sewer and water. Goals 14 and 11 are intended to prevent premature urbanization of areas outside a UGB.

The recommendation to approve the goal exception finds that expansion of the marina can occur consistent with the density limitation of 1 home per 50 feet, and that services for public sewer and municipal water are available to serve the expansion. The areas identified in the attached site plans (Exhibit B) meet the criteria for an "irrevocably committed" and "physically developed" exception in that urban services and physical improvements already exist, and the project is consistent with existing marina development within the property and surrounding areas already developed at urban residential densities.

The applicant has also submitted a request to establish a Special Plan Area (SPA) zoning district to achieve a density in excess of one houseboat per 50 feet of frontage currently allowed under Policy 26 (houseboats). The Planning Commission recommended denial of this request in finding that the applicant has not demonstrated that the SPA criteria within the Rural Area Plan Policy 15 (particularly with respect to impacts on traffic, natural resources and wildlife) or the zone change criteria of Multnomah County Code 37.0705(B)(2) have been met. Further it was found that the Special Plan Area regulations should not be used to consider a request to exceed the one dwelling per 50 feet of waterfront density threshold.

Denial of the Special Plan Area zone change request limits the density of one floating home per fifty feet of waterfront in the Rocky Pointe Marina. Approval of the goal exception as recommended by the Planning Commission identifies the limitations of the expansion of the marina with a limitation consistent with the cap of one home per fifty feet of frontage, allowing for the possibility of 23 new houseboats instead of the requested 36.

3. **Explain the fiscal impact (current year and ongoing).**

   N/A

4. **Explain any legal and/or policy issues involved.**

   The Planning Commission discussed the policy of limiting development to 1 home per 50 feet of waterfront, and felt that this was not the appropriate process to address this and is better addressed under a legislative review where the benefits and impacts of a policy decision to the entire

community can be considered instead of making a policy decision one property at a time. This can be addressed under policy and code revisions that can be brought by staff before the Planning Commission in the future.

5. Explain any citizen and/or other government participation that has or will take place.

As part of the process, the State must concur with any goal exception approval granted by the Board. Staff has been working closely with the State Department of Land Conservation and Development (DLCD) to ensure consistency with state requirements and support for the application. A public hearing before the Multnomah County Planning Commission was held on April 6th, 2009. This meeting was continued and concluded on May 4th, 2009. Testimony from the public was received both in support and in opposition of the project.

Required Signature

Elected Official or Department/ Agency Director: **Date: 12/30/09**

BEFORE THE PLANNING COMMISSION
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. T4-08-001

Recommend to the Board of County Commissioners approval of a request for exception to Statewide Planning Goals 11 and 14 to increase the number of floating homes at the Rocky Pointe Marina.

Recommend to the Board of County Commissioners denial of a Special Plan Area zone change request to exceed the residential density limit of one floating home per fifty feet of waterfront in the Rocky Pointe Marina.

The Planning Commission Finds:

a. The Planning Commission is authorized by Multnomah County Code, MCC 37.0540(D) and by ORS 215.110 to recommend to the Board of County Commissioners actions that amend the Multnomah County Comprehensive Plan. The requests described below qualify as a Type IV quasi-judicial land use review, which must be heard by the County's Planning Commission who then forward a recommendation to the Board of County Commissioners (MCC 37.0530(D)).

b. The County's Multiple Use Agriculture-20 zoning district limits residential development to no more than one dwelling per parcel (Multnomah County Code, MCC 34.2820(C)).

c. This standard aligns with state wide planning Goal 14 (Urbanization) and Goal 11 (Public Facilities and Services) designed to prevent urbanization of rural lands outside of a City's Urban Growth Boundary.

d. Owners of the Rocky Pointe Marina (23586 NW Saint Helens Road) have requested exceptions to statewide planning Goals 14 and 11 to add 36 additional floating homes to the existing marina in which 40 floating homes are currently allowed. A Special Plan Area zone change has also been requested by the owners to expand the Rocky Pointe Marina beyond the one floating dwelling per fifty feet of waterfront frontage residential density limitation captured in the County's Conditional Use regulations (MCC 34.6755).

e. The Planning Commission is recommending the Board of County Commissioners approve the request for exceptions to Statewide Planning Goals 11 and 14 to increase the number of floating homes at the Rocky Pointe Marina. Justification for Goal Exception approval is outlined in the staff report labeled Exhibit A.

f. The Planning Commission recommends that the Board of County Commissioners deny the Special Plan Area Zone Change request. The Planning Commission finds the Special Plan Area regulations should not be used to consider a request to exceed the one dwelling per 50 feet of waterfront density threshold and that the applicant had not demonstrated the Special Plan Area guidelines were met.

g. Notice of the Planning Commission hearing was published in the 'Oregonian' newspaper and on the County's Land Use Program web site. The Planning Commission held a public hearing on April 6th, 2009 where all interested persons were given an opportunity to appear and be heard. This initial hearing was continued and concluded on May 4th, 2009.

Findings for the Goal Exception approval and Special Plan Area Zone Change denial are contained in the staff report labeled Exhibit A.

The Planning Commission Resolves:

That this resolution, supported by the findings in the staff report (attached as Exhibit A), and in association with the plans delineating the requested exception areas in Exhibit B, are hereby recommended for adoption by the Board of County Commissioners.

ADOPTED this 19 day of October, 2009.

PLANNING COMMISSION
FOR MULTNOMAH COUNTY, OREGON

John Ingle, Chair

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. _____

Amending the Sauvie Island/Multnomah Channel Rural Area Plan Map to Note Exceptions to State Land Use Goals

The Multnomah County Board of Commissioners Finds:

a. On April 6, 2009, the Multnomah County Planning Commission conducted a public hearing as provided for in Multnomah County Code § 37.0530, with respect to requests for exceptions to Statewide Planning Goals 11 and 14 to increase the number of floating homes at Rocky Pointe Marina and for a Special Plan Area zone change to exceed the residential density limit of one floating home per fifty feet of waterfront in the Rocky Pointe Marina. This meeting was continued and concluded on May 4, 2009.

b. By Resolution T4-08-001 attached as **Exhibit A** and adopted on October 19, 2009, the Planning Commission recommended approval of the requested exceptions to Statewide Planning Goals 11 and 14 and denial of the Special Plan Area zone change based on the findings in the T4-08-001 Staff Report. The property is described and depicted on the Vicinity Map in the Staff Report.

c. The Comprehensive Plan Map designation of the property was last amended in Ordinance 887 as part of the Sauvie Island/Multnomah Channel Rural Area Plan that was adopted in October of 1997.

Multnomah County Ordains as follows:

Section 1. Based upon the findings in the T4-08-001 Staff Report, which is incorporated herein by reference, the Multnomah County Sauvie Island/Multnomah Channel Rural Area Plan Map (Map) adopted by Ordinance 887 is amended to note the Exceptions to statewide planning goals to increase the number of floating homes at Rocky Pointe Marina as shown on the Map attached as **Exhibit B**. This approval is contingent upon Rocky Pointe Marina meeting the conditions of the approvals set out in the T4-08-001 Staff Report.

Section 2. Based upon the findings in the T4-08-001 Staff Report, which is incorporated herein by reference, the Special Plan Area zone change request to exceed the residential density limit in county code of one floating home per fifty feet of waterfront property is denied.

FIRST READING: January 21, 2010

SECOND READING AND ADOPTION: January 28, 2010

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

_____
Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By_____
Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:
M. Cecilia Johnson, Director, Department of Community Services

MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
http://www.co.multnomah.or.us/landuse

Staff Report

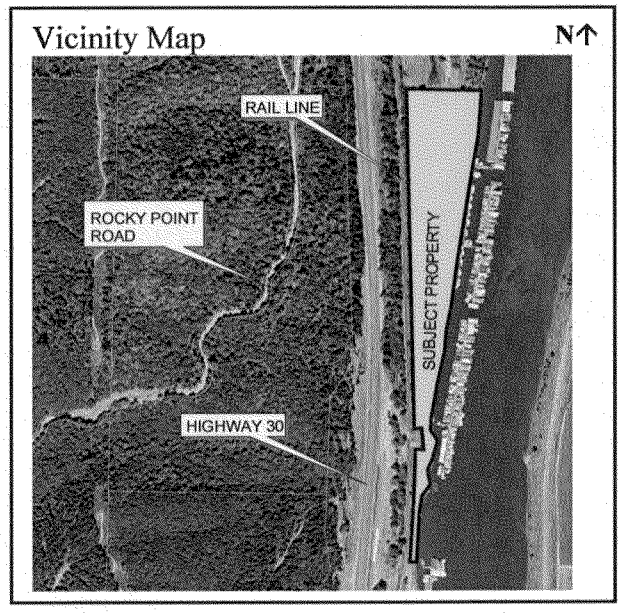
Application for exceptions to statewide planning Goals 14 (Urbanization) and 11 (Public Facilities and Services) to expand the Rocky Pointe Marina and to establish a Special Plan Area zoning district.

Case File: T4-08-001

Scheduled for Public Hearing in front of the Multnomah County Planning Commission

Planning Commission Hearing Date, Time, & Place:

Monday, April 6th, 2009 at 6:30 PM or soon thereafter, at the Multnomah County Building, Room 100 (501 SE Hawthorne Blvd., Portland, OR)



Location: Rocky Pointe Marina is a 16.22-acre parcel at 23586 NW St. Helens Road adjacent to the Multnomah Channel, 1.2-miles south of the Multnomah County/Columbia County line. The property is accessed on the west side by Lower Rocky Point Road which terminates at Highway 30.

The 16.22-acre parcel includes the following two tax lots:

Township 3 North, Range 2 West, Section 36A – Tax Lot 400 (Account # R982360300)
Township 3 North, Range 2 West. Section 36D – Tax Lot 100 (Account# R982360080)

Exhibit A

Applicant: Peter Finley Fry, AICP, Ph.D.
2153 SW Main #105
Portland, OR 97205

Owners: **(Upland Area)**
Stanley & Jeniece Tonneson
23586 NW St. Helens SP U7
Portland, OR 97231

(In-Water Area)
State of Oregon

Summary: The request is for 'Physically Developed' and 'Committed' exceptions to Statewide Planning Goals 14 (Urbanization) and 11 (Public Facilities and Services) and for the establishment of a Special Plan Area subdistrict to allow an alternative to the one houseboat per 50-foot of waterfront frontage carrying capacity limitation of the county's Conditional Use provisions.

This exception envisions the following major alterations to the existing operation: 36 new floating homes, relocation of 30 existing boat slips within the operation, removal of 16 existing boat slips, dry dock repair improvements, 65 new auto parking spaces, expansion of the existing boatyard and construction of approximately 520 linear feet of new dock on the upstream (south) side of the marina. After the proposed improvements are completed, the marina will serve 76 floating dwellings, 150 boat slips, seven (7) boat houses and 231 auto parking spaces.

The site specific development must also be reviewed and approved through pending county land use reviews in the event the goal exception request is approved. These reviews include Conditional Use/Community Service Use, Design Review, Willamette River Greenway, Flood Hazard and Grading and Erosion Control Permits.

The public hearing on this exception request will be considered by the Multnomah County Planning Commission who will either forward a recommendation of approval to the Board of County Commissioners or will deny the request. Staff will present the Planning Commission's recommendation of approval to the Board of Commissioners at a separate public hearing in the event the Planning Commission recommends approval. If approved, the Board's decision must then be affirmed by the State of Oregon Department of Land Conservation and Development.

***Formatting Note**: The double underlined and strikethrough language in yellow within the Staff report below has been amended after the final May 4th Planning Commission hearing. These changes were primarily in response to requests for clarification by the Planning Commission. A few additional changes were made to correct inaccurate references.*

Zoning & Applicable Approval Criteria: **Base Zone**: Multiple Use Agriculture-20 (MUA-20)

Zoning Overlays: Willamette River Greenway, Flood Hazard & National Wetlands Inventory Wetlands

Applicable Standards, Policies and Goals:

- Multnomah County Code (MCC) 37.0705 (Type IV Quasi-Judicial Plan and

Zone Change Approval Criteria))

- Oregon Revised Statutes 197.732 – Goal Exceptions; Criteria; Rules; Review
- Oregon Administrative Rule 660-014-0030 (Rural Lands Irrevocably Committed to Urban Levels of Development); OAR 660-004-0025 (Exception Requirements for Land Physically Developed to Other Uses) & OAR 660-004-0028 (Exception Requirements for Land Irrevocably Committed to Other Uses)
- Oregon Statewide Planning Goal 14 (Urbanization) & Goal 11 (Public Facilities and Services
- Multnomah County's Comprehensive Framework Plan Policy 6 (Urban Land Area), & Policy 10 (Multiple Use Agriculture Land Area)
- Multnomah County's Sauvie Island/Multnomah Channel Rural Area Plan Policies 13 (SPA Procedures), 14 (SPA Density) & 15 (SPA Development Criteria)

Recommended Planning Commission Decision:

Staff recommends the Planning Commission forward a recommendation of **approval** to the Board of County Commissioners for the Exception request to Statewide Planning Goal 14 and Goal 11, for all proposed areas other than the westerly boatyard expansion and areas of existing commercial development not required to support the residential uses. Expansion of the boatyard does not require an exception because the use is not residential (Goal 14) nor is it dependant upon sewer service (Goal 11). The scope of the commercial activities does not exceed that allowed in the Oregon Administrative Rule and therefore a goal exception is not necessary to continue with these uses.

Staff recommends the Planning Commission **deny** the request to establish a Special Plan Area because, as outlined in this report, the applicant has failed to establish that the project conforms to the approval criteria outlined in Policy 15 of the County's Sauvie Island/Multnomah Channel Rural Area Plan, nor have they shown that there is a public need, which is required in order for a zone change to be approved (MCC 37.0705(B)(2)). If the Planning Commission accepts the staff recommendation, the applicant would potentially be able to expand the houseboat moorage at a density of not more than 1 unit for every 50 feet of frontage provided they obtain the required land use permits. This would allow up to 23 new floating homes.

Recommended Conditions of Approval to Forward to the Board of County Commissioners

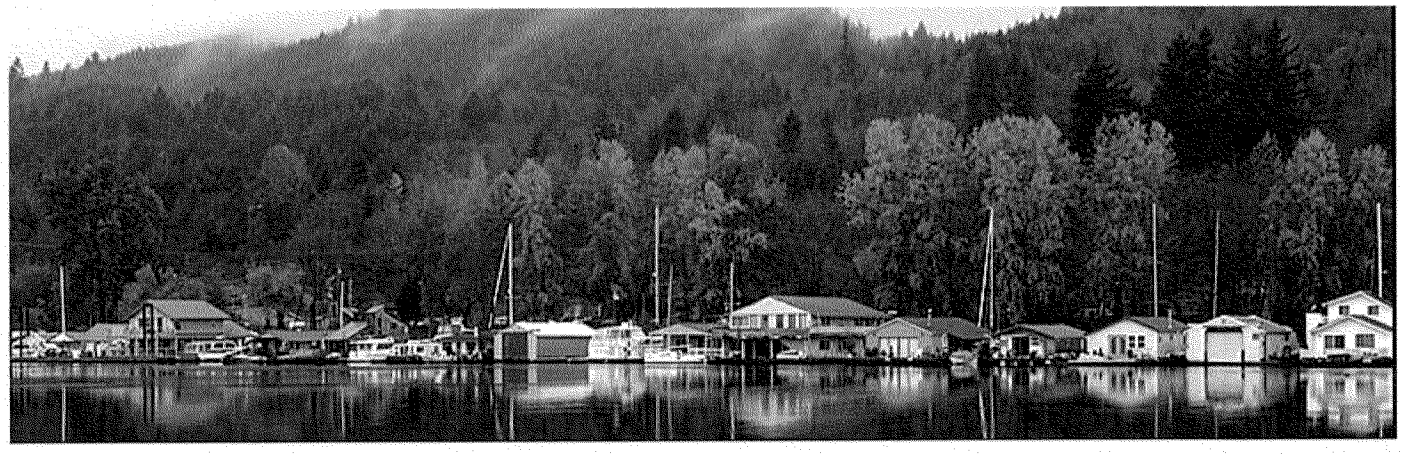
The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. The property owner(s) must receive county land use permit approval prior to construction of the proposed development (Multnomah County Code, MCC 34.2815). Permits applicable to this proposal include, but are not limited to, Community Service Conditional Use Permit, Willamette River Greenway Permit, Design Review Permit, Flood Hazard Permit and a Grading and Erosion Control Permit.

2. The Irrevocably Committed exception areas to Goal 11 in Exhibit 1 and to Goal 14 in Exhibit 2 shall be amended to exclude the proposed boat yard expansion area west of the existing boat yard (Oregon Administrative Rule, OAR 660-004-0028(2)(a),(b)) & OAR 660-014-0030(4)). The Physically Developed exception to Goal 11 and Goal 14 areas in Exhibit 3 shall be amended to exclude all areas of commercial development not required to support the residential uses such as the boatyard, boatyard office, boat haul out pier, boat wash down pad and building, boatyard restroom, fuel dock, marine sewer pump out station, and four public restroom/laundry facilities (OAR 660-004-0025(1) & OAR 660-014-0030(4)).

~~3. A minimum setback of 50 feet shall be maintained between the southernmost extent of the in-water development (including moored structures and boats at the Rocky Pointe Marina) and the northernmost extent of Happy Rock Moorage to the south (MCC 37.0705(A)(3)(b)).~~

4. 3. A traffic impact study shall be conducted by a traffic engineer retained by the property owner(s) to determine if any traffic mitigation is required, including re-constructing the railroad crossing (Exhibit 33). This study shall be provided to the county prior to re-initiation of the associated Type III land use review currently pending (MCC 37.0705(A)(3)(c)).



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Findings of Fact

(Formatting Note: Staff provides findings referenced herein as necessary to address applicable county and state requirements. Headings for each finding are numbered. County and state requirements are referenced using a **bold** font. Planning staff comments and analysis may follow applicant comments. Where this occurs, the notation "**Staff**" precedes staff comments and the notation "*Applicant*" precedes the applicant's comments).

1.0 PROPOSAL SUMMARY

Applicant: The existing Rocky Pointe Marina site was founded in the late 1920's/early 1930's.[1] *The original floating home and office/fuel building are still in the same use today. Rocky Pointe has been a moorage, boat repair and fueling station since that time. Rocky Pointe is now one of Oregon's largest marinas and floating home communities, providing over 200 temporary and permanent spaces with existing amenities that include showers, washers/dryers, portable pump-outs and public on the water sewage disposal. The marina has an existing boat yard that provides full service professional repairs, refits, and upgrades in fiberglass, wood, and metal. The marina also includes a Marina Store, public fueling station, and on-shore parking. In 2006, Rocky Pointe Marina became the first certified "Clean Marina" by the Oregon State Marine Board (Exhibit 1).*

The application seeks approval of a "physically developed" and "irrevocably committed" exception to Goals 11 and 14, in order to allow for additional development within the existing facility and for the expansion of the marina to the south. The project proposed to install a new 520 foot +/- dock on the upstream side of the existing marina between the existing marina and the adjacent marina upstream and expansion of the boat yard. The overall concept is to locate boat slips on the bank side and house boats on the stream side (see map). This accomplishes several goals; reduces the impact of shade on the areas close to shore; protects the boats from wake; protects the boats from vandalism; gives the house boats access to sun and views; and presents to the public a neighborhood. Improvements within the "physically developed" exception area will consist of (northern/downstream):

- *21 new houseboats to replace boat slips for a total of 61 houseboats*
- *Marina is allowed up to 150 boat slips, with 30 to be relocated to the new dock*
- *Floating home repair building (dry dock)*
- *Add ~~73~~* (the applicant has since reduced to 65) *new parking spaces to the already existing 166 parking spaces*

Improvements within the "irrevocably committed" exception area consist of (northern/downstream):

- *Expansion of an acre boat yard up to two and a half acres.*

Improvements within the "irrevocably committed" exception area consist of (southern/upstream):

[1] Applicant's Source: Aerial photographs from the Oregon Map Library.

- *Extending dock to accommodate additional houseboats and boats*
- *15 new houseboats*
- *Relocate 30 existing boat slips to the bank side to a new dock*

As stated, improvements include extending the existing up stream dock an additional 520 feet +/- to accommodate 15 floating homes on the outside of the existing dock with 10 new boat slips on the bank side of the dock along with the displaced outside boat slips of 20 from the existing dock to 30 slips on the bank side. The addition of 520 additional feet of dock using modern materials and techniques will not adversely impact the environment, and will provide safer conditions for users and a more functional facility.

The new marina area will consist of floating docks extended from a new/safer five foot ramp replacing the existing four foot main ramp and utility services. The existing four foot ramp will be used as a single emergency only gangway for emergency access to shore, and 40 steel pilings up to 20 inches in diameter will be placed to secure the dock extension. The existing upriver docks and new dock will be increased from 5 feet to 8 feet wide (6 feet of wood decking and 2 feet of grating for utility access) to provide greater safety.

The results will be 76 houseboats (40 existing and 36 new), 150 boat slips (134 front in slips and 16 side slips); 7 boat houses, and ~~239~~ 231[2] parking spaces (166 existing and ~~73~~ 65 new). The proposed work includes restoration and native re-vegetation designed to improve the existing natural resources. A maintenance plan will provide methods and guideline to protect the resource and landscaped areas. An interpretive trail is proposed for construction along the bank and lake...

(**Staff:** An inaccurate reference to a 1993 goal exception approved on this site was removed. Staff found no evidence of a Goal Exception approved on this site in 1993).

...Rocky Pointe was originally approved by Multnomah County in 1993 as a conditional use. The marina was approved for 40 houseboats, 150 boat slips, seven boathouse spaces, and 166 parking spaces.

In 1997, Multnomah County adopted a streamlined land use review known as Policy 10 that legalized existing moorages. Rocky Pointe was inventoried, but not forced to participate, as it was a legally established moorage under a 1993 conditional use approval. Since 1993, improvements have been made to the moorage including state mandated improvements and safety and environmental quality systems.

Statewide Planning Goal 11: Goal 11 and related rule limits urban levels of services outside urban growth boundaries and unincorporated communities. An urban level of service includes the extension or establishment of a sewer system outside an urban growth boundary or unincorporated community boundary. A "sewer system" is defined as a system that serves more than one lot or parcel (OAR 660-011-0060(1)(f)). A "Physically Developed" and "Irrevocably Committed" exception to Goal 11, as outlined OAR 660-004-0025 and OAR 660-004-0028, is being proposed for the marina.

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[2] The applicant amended the proposal to involve the double underlined numbers after the narrative was prepared. Because the applicant did not update the narrative to reflect this change, staff has noted the change.

Statewide Planning Goal 14: Although the channel itself was not included in this original exception to Goal 4, the moorages and the facilities supporting the houseboats (located on both sides of the channel) were part of this exception. The Multnomah County code considers houseboats and floating homes as single family dwellings. State rules specifies that the county shall not allow more than one dwelling to be placed on a lot or parcel in the MUA-20 zone (OAR 660-004-0040(7)(f)).

A "Physically Developed" exception to Goal 14 is being taken for the existing developed areas of the marina, and an "Irrevocably Committed" exception to Goal 14 is being taken for the undeveloped potion of the marina proposed for expansion (See Exhibit One showing boundaries of exceptions). The criteria for these exceptions are outlined in OAR 660-014-0030.

Staff: A marina was first constructed on this site prior to the establishment of zoning regulations in the mid 1950's, was expanded in the 1960's and again in the 1990's. The scope of the operation was most recently reviewed by Multnomah County in 1993 and permitted through a public Community Service/Conditional Use review process (Permits CS 1-93, HV 1-93, WRG 1-93 and CU 7-93). The 1993 permit authorized up to 40 houseboats (i.e. floating dwellings), 150 boat slips, seven (7) boathouse spaces and 166 automobile parking spaces.

The applicant is requesting a 'Physically Developed' and 'Committed' exception to both statewide planning Goals 14 (Urbanization) and 11 (Public Facilities and Services) in order to expand the moorage to the south and allow additional residential infill within the existing operation. All 40 existing floating homes are located within the area delineated by the applicant as part of the Physically Developed exception request (Exhibit 3). An exception to Goal 14 is necessary to expand the moorage because the proposal involves establishing more than one single family dwelling on a parcel. Goal 14, and it's implementing Oregon Administrative Rules (OARs), limit rural development outside of an Urban Growth Boundary to one dwelling per parcel.

> *"**Goal 14**, Single-Family Dwellings in Exception Areas. Not withstanding the other provisions of this goal, the commission may by rule provide that this goal does not prohibit the development and use of one single-family dwelling on a lot or parcel that: (a). Was lawfully created; (b) Lies outside an acknowledged urban growth boundary or unincorporated community boundary; (c) Is within an area for which an exception to Statewide Planning Goal 3 or 4 has been acknowledged; and (d) Is planned and zoned primarily for residential use."*
>
> *"**OAR 660-004-0040(7)(f)** - Except as provided in subsection (e) of this section, a local government shall not allow more than one permanent single-family dwelling to be placed on a lot or parcel in a rural residential area. Where a medical hardship creates a need for a second household to reside temporarily on a lot or parcel where one dwelling already exists, a local government may authorize the temporary placement of a manufactured dwelling or recreational vehicle."*

OAR 660-004-0040 became effective on October 4, 2000, and included this provision limiting one dwelling to a lot or parcel under 660-004-00040(7)(f). Staff was informed by Department of Land Conservation and Development staff on August 29th, 2006 that the Goal 14 residential development limitation applies to moorage development and that the channel itself is considered a separate parcel (Exhibit 49). This interpretation prohibits the expansion of houseboat moorages without an exception to Goal 14. An exception to Goal 11 is also necessary because the expansion requires sewer service to cross from one parcel (upland parcel)

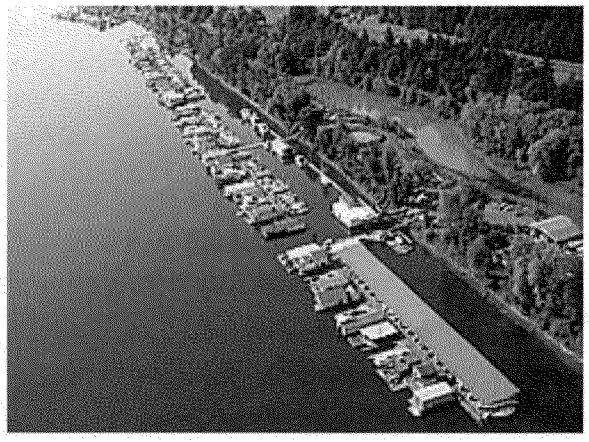
into another (channel parcel) which is prohibited by Goal 11 on lands outside an Urban Growth Boundary.

The proposal involves 520-feet of new dock, establishment of an emergency gangway ramp, 36 new floating homes (76 homes resulting) and 65 new auto parking spaces (231 parking spaces resulting). Dry dock repair improvements and expansion of the existing boatyard is also proposed along with establishing a 25-foot by 40-foot floating community meeting room within the in water expansion area. Thirty (30) boat slips will be relocated within the marina. Sixteen (16) boat slips will be removed.

The applicant is requesting the Planning Commission confirm the proposed residential density is appropriate through the Special Plan Area (SPA) master planning provisions as an alternative to the Conditional Use limitation of one houseboat per 50 feet of waterfront frontage (MCC 34.6755). The proposal exceeds this 1:50 residential cap by 13 dwellings when measuring the parcel's waterfront frontage. The result of proposal would equal 1 dwelling per 41.4 feet of frontage, 1:41).

Site specific development will be reviewed by the county through separate applications for Conditional Use/Community Service Use, Design Review, Willamette River Greenway, Flood Hazard and Grading and Erosion Control Permits. The applicant has submitted applications for these permits, and they are on hold pending a decision on the goal exception and SPA request.

2.0 PROPERTY DESCRIPTION



Staff: Rocky Pointe Marina is a 16.22-acre parcel at 23586 NW St. Helens Road between Happy Rock Moorage to the south and McCuddy's Big Oak Marina to the north. The property is at river mile 14 of Multnomah Channel which is a side channel of the Willamette River created as the Willamette splits around Sauvie Island. The property is located 1.2-miles south of the Multnomah County/Columbia County border in the Sauvie Island/Multnomah Channel Rural Plan Area (Exhibits 5, 6, 7, 8, 9 & 10). Land to the west across Highway 30 begins to rise in elevation forming the Tualatin Mountains which are more commonly referred to as the West Hills. Properties west of the site tend to be larger, forested, steep and zoned for Commercial Forest Use. The terrain is nearly level where large tracts of farmland are found across the channel to the east on Sauvie Island.

The subject property is accessed on the west side by Lower Rocky Point Road which terminates

at Highway 30. The Wildwood Golf course is located roughly ½ mile to the southwest. A heavy rail line managed by the Oregon Department of Transportation borders the western side of the site with the channel flowing at an angle along the east side of property, forming a wedge shaped parcel. The property is zoned Multiple Use Agriculture-20 with zoning overlays for the 100-year floodplain, the Willamette River Greenway and for wetlands designated on the National Wetlands Inventory.

The northern end of the property is approximately 500 feet wide and the southern end forms the narrowest point of the property, roughly 16 feet wide (Exhibit 9). A paved, 12-foot wide private access, referred to as Old Lower Rocky Point Road extends from Lower Rocky Point Road, south to Happy Rock Moorage from Highway 30.

Approximately 95% of the nearly level property is within the mapped 100-year floodplain according to Federal Emergency Management Agency Flood Insurance Rate Maps. A wetland area covers approximately 25% - 30% of the property, located along the western and northern half of the property according to National Wetland Inventory maps[3]. Site vegetation primarily consists of cottonwoods along the riverbank, forested land west of the wetland complex, areas of wetland vegetation adjacent to the wetland and residential grasses.

Upland site improvements include an internal driveway system, auto and trailer parking/storage, boat repair yard, boat yard restroom, water well and well house, fuel/propane tanks, sewer treatment system, sewer evaporation pond, boat ramp, recycling/garbage stations, fencing, and miscellaneous incidental marina operational buildings for storage and office work. Current in-water improvements including three gangway ramps, three main docks with one smaller transient dock paralleling the bank, pilings, slips for floating homes, floating garages and boats. The docks extend across roughly 2,450-feet of the site's ~3,150-feet of channel frontage (Exhibit 4, 11, 12, 13 & 77).

3.0 INITIATION OF ACTION (MCC 37.0550)

Except as provided in MCC 37.0760, 33.7785, 34.7785, 35.7785, and 36.7785, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser, or by a government agency that has the power of eminent domain. PC (legislative) actions may only be initiated by the Board, Planning Commission, or Planning Director.

Staff: Stanley H. Tonneson and Jeniece J. Tonneson are listed as the property owners in county tax assessment records. Both have provided written authorization on the General Application Form for Peter Fry to act as their representative for this project and for Multnomah County to process this request (Exhibit 51). Mr. and Mrs. Tonneson lease the in-water development area from the Division of State Lands (DSL). This includes the proposed expansion area south of the existing moorage. On December 16, 2005, Tami Hubert with DSL stated that they do not object to the proposal (Exhibit 45). A Removal/Fill Permit was issued by DSL February 18th, 2009 to place up to 43 pilings and remove 6 pilings, within the proposed expansion area (Exhibit 42). Staff finds the necessary authorization has been provided to initiate this Type IV action.

[3] On-site wetlands are mapped on the National Wetland Inventory as PEMC (Palustrine Emergent Seasonally Flooded) and PSSC (Palustrine Scrub Shrub Seasonally Flooded).

4.0 CODE COMPLIANCE (MCC 37.0560)

Except as provided in subsection (A), the County shall not make a land use decision or issue a building permit approving development, including land divisions and property line adjustments, for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County. (A) A permit or other approval, including building permit applications, may be authorized if:

(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or (2) It is necessary to protect public safety; or (3) It is for work related to and within a valid easement over, on or under an affected property.

Staff: An anonymous complaint filed in 2005 alleged boats were being used for living quarters (exceeding the 40 floating homes permitted by the county), that portions of the access road and parking lot were paved without permits, the boat yard was expanded and several large buildings were erected without permits (complaint #UR-05-008). County code compliance staff confirmed the following compliance issues on the property after investigating the complaint:

SPECIFIC VIOLATIONS

Policy 10 Process

A. *A Willamette River Greenway Permit was not obtained to reconcile the Policy 10 Process for Rocky Pointe Marina.*

Boatyard Repair area improvements outside of Conditional Use Permit 7-93 (CU 7-93) Authorization

B. *The expansion of the boatyard repair area: CU 7-93 Condition of Approval # 5 approved boatyard repair area of 10,000 square feet. There is currently +/- 40,000 square feet utilized for the boatyard repair area. The November 2005 site inspection verified the extended area used for boatyard repair. Measurements taken from 2004 aerial photographs of the marina property indicate the boatyard repair area now covers approximately 40,000 square feet.*

C. *The construction of the cement block explosion resistant building, the placement of a small shed near the north marina northern most property line, the placement of a manufactured home structure and the placement of cloth covered metal frame hangar/boat repair structures in the boat repair yard area, and large rectangular metal storage containers located on the marina properties - none of these structures are included in CU 7-93 Condition of Approval #5.*

Re-configured Marina outside of CU 7-93 Authorization

D. *The construction of additional bathroom/shower facilities on the marina floats occurred*

without prior land use review and approval. These additional structures were not approved through CU 7-93.

E. *The addition of the fuel dock, pilings, and sewage pump-out station to the middle marina occurred without prior land use review and approval. These improvements were not approved through CU 7-93.*

F. *The addition of a restroom for the office building of the marina occurred without prior land use review and approval. This improvement was not approved through CU 7-93.*

Flood Hazard Regulation Violation (MCC 29.600-29.611)

G. *The construction and/or placement of structures in the regulatory floodplain occurred without prior land use review and approval. This is a violation of MCC 29.603(A) – Permits.*

Grading and Erosion Control Violation (MCC 29.333(C))

H. *The paving of the marina properties from the Rocky Pointe Road entrance north through the boatyard repair area occurred without prior land use review and approval. This is a violation of MCC 29.333(C).*

Increased Number of dwellings above the 40 approved in CU 7-93

I. *Barge houses moored at the marina are included in the number of houseboats approved for the marina in the 1993 permits (40). Mr. Richard Tonneson advised the Code Compliance Specialist during the November site inspection there are several barge houses at the marina used as dwellings. Any barge houses at the marina in addition to the 40 houseboats approved exceeds the permit authorization and is a violation of the 1993 permits issued for the marina reconfiguration (Condition of Approval #1 and #5 of CU 7-93.)*

Increased number of boat slips above the 150 approved in CU 7-93

J. *The number of boat slips (+/-165) at the marina is in excess of the 150 approved in the 1993 marina reconfiguration land use permits. This is a violation of the Condition of Approval #1 and #5 of CU 7-93.*

The land owner has signed a Voluntary Compliance Agreement committing him to resolving these compliance issues. This includes obtaining appropriate land use and building permits for non-compliant development. The owner is also proposing to eliminate all live aboard boats at the operation. Unpermitted work will be reviewed through the following pending permits: Conditional Use/Community Service Use, Willamette River Greenway, Design Review, Variance, Grading and Erosion Control and Flood Development Permit. All necessary permits have been applied for. Therefore, this exception request is a sequencing of permits towards compliance as allowed under MCC 37.0560(A)(1).

5.0	LOT OF RECORD (MCC 36.0005(L)(12))

Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 34.7785. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(* * *)

Staff: The applicant applied for county approval in 2008 to consolidate six parcels into one Lot of Record. This request was approved on August 25th, 2008 with permit T1-08-031. A deed consolidating the parcels was recorded with Multnomah County Records October 3rd, 2008 which finalized the action (deed instrument number 2008-139724). Staff finds the subject property is a Lot of Record. Although the state owned channel is considered a separate parcel by DLCD for purposes of Goal 14 density calculations, it is not a discrete parcel subject to the county Lot of Record provisions above.

6.0	ADMINISTRATIVE PROCESS – TYPE IV QUASI-JUDICIAL ACTION (MCC 37.0705)

6.1 MCC 37.0705(A) Quasi-judicial Plan review Revision. The burden of proof is upon the person initiating a quasi-judicial plan revision. That burden shall be to persuade that the following standards are met:

6.1.1 MCC 37.0705(A)(1) The plan revision is consistent with the standards of ORS 197.732 if a goal exception is required, including any OAR's adopted pursuant to these statutes;

~~**ORS 197.732 Goal exceptions; criteria; rules; review.**~~

~~**(1) As used in this section:**~~
~~**(a) "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.**~~
~~**(b) "Exception" means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:**~~
~~**(A) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;**~~
~~**(B) Does not comply with some or all goal requirements applicable to the subject properties or situations; and**~~
~~**(C) Complies with standards under subsection (2) of this section.**~~

Applicant: The applicant has applied for two state wide land use planning goal exceptions through Multnomah County.

Staff: The applicant is requesting exceptions to Goals 11 and 14. The exceptions will allow urban levels of residential development outside an Urban Growth Boundary, contrary to Comprehensive Framework Plan Policy 6 for Urban Land Area, and Policy 10 which calls for rural scale development on Multiple Use Agriculture designated lands. Exceptions are limited

to the subject property.

Oregon Revised Statutes (ORS) 197.732 outlines the options for an exception to any statewide planning goal. The three options are commonly referred to as a "physically developed", "irrevocably committed" and, a "Reasons" exception. The applicant is requesting a physically developed and irrevocably committed exception to both goals pursuant to the procedures of ORS 197.732(1)(a) and (b). The Reasons criteria of ORS 197.732(1)(c) are not applicable to this request. The implementing Oregon Administrative Rules (OARs) provide specific approval criteria which are addressed below.

Goal 11 Exception Requirements for Land Physically Developed to Other Uses (OAR 660-004-0025)

6.1.2 ORS 197.732(1) A local government may adopt an exception to a goal if:

6.1.2.1 ORS 197.732(1)(a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;

Staff: This standard, amongst other applicable criteria, is reflected verbatim within the administrative rule OAR 660-004-0025 applying to all physically developed exception requests to Goal 11. This physically developed analysis is provided below.

6.1.2.1.1 OAR 660-004-0025(1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal.

Applicant: Rocky Pointe Marina has its own on site waste disposal facility that is permitted with the Oregon Department of Environmental Quality (DEQ) for both a level 1 treatment and level 1 collection for domestic waste water utilizing an activated sludge process. As required under permit in accordance with OAR, Chapter 340, Division 49, a certified supervisor manages the systems and reports to DEQ monthly. This disposal system services the floating homeowners, public restrooms, and public boat dump stations, which are all non-terrestrial. The boat repair facility is the only upland facility hooked up to the sewer. The existing DEQ permit allows for up to 6,500 gallons of effluent per day. Current levels are about 5000 gallons per day. Application is being filed with DEQ to increase volume to meet needs of additional homes proposed.

Staff: The 16.22 acre property is long, wedge shaped and quite narrow towards the southern end. The north end is roughly 500-feet wide tapering down to about 16 feet at the south end. The applicant's site plan in Exhibit 3 outlines the areas proposed for the Physically Developed Goal 11 exception. It includes all existing houseboats on the channel that are connected to a sewer and water system and upland areas that have been improved with sewer and water related infrastructure. The undeveloped portions of the property, such as the ~5-acre wetland located on the west side of the property and nearby wooded areas, are not included in the Goal 11 physically developed area. In addition, the proposed expansion area is not included in the Goal 11 physically developed exception area. Although a paved access road to Happy Rock Moorage runs along the upland portion of the expansion area, sewer and water lines do not.

The applicant has prepared detailed site plans labeling the types of existing sewer and water related development on the property (Exhibits 4, 16 & 77), including: restrooms, sewer receiving vaults, marine sewer pump, sewer lines, sewage lagoon, the 10,000 gallons per day (gpd) sewer plant, sedimentation vaults, evaporation pond, water well house, water storage and treatment area, fire department connections (FDC), primary electrical transformers and water lines. These improvements are of an urban scale and run the length of the requested upland and in-water exception area and serve residential densities comparable to an urban residential subdivision. The applicant included two small open areas on either side of Lower Rocky Point Road within the Goal 11 Physically Developed exception request tenants of the marina use for recreational purposes including dog running, horseshoes, volleyball and picnics.

In order to approve an exception, the County must determine that the land that is developed with these improvements is unavailable to all other uses that could potentially be approved in the MUA-20 zone (i.e. uses allowed by the applicable goal). In general, the types of uses that could potentially be allowed by the zone include farm uses, forest practices, conservation areas, a single family dwelling, large fills, and structures/buildings used to either support certain businesses and community service uses. These uses cannot be established where sewer and water infrastructure is in place within the areas delineated for the Goal 11 physically developed exception without displacing or interrupting those services. Therefore, a physically developed exception is justified in these areas.

Houseboat and houseboat moorages are a potentially permitted use within the MUA-20 district; however, to put that use in place today would require the establishment or extension of a sewer service, necessitating an exception to Goal 11. Therefore, it is inappropriate for the County to consider houseboats as a potentially allowed use for the purpose of this analysis.

6.1.2.1.2 OAR 660-004-0025(2) Whether land has been physically developed with uses not allowed by an applicable Goal, will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.

Applicant: The sewer system on the uplands at Rocky Pointe Marina consists of 3 large underground collecting vaults (approximately 500 gallons each). One each located near each of the 3 ramps. These vaults are connected by underground pipes to the final two underground vaults prior to entering the sewage plant. The plant itself consists of tanks with a capacity of 10,000 gallons. When complete, the liquid is discharged into an evaporation pond approximately 100 feet in diameter. The plant and pond are enclosed by a 6 foot cyclone fence. The fence area is buffered by landscaping – over 100 laurel shrubs.

Staff: Goal 11 does not allow sewer systems to be established or extended outside an Urban Growth Boundary. This prevents premature urbanization of rural lands. The applicant's narrative and the prior finding describe the extent and location of the physical development associated with the sewer and water conveyance, collection and treatment. The exception is limited to these areas, which have been mapped by the applicant. The prior finding lists the

types of uses that can be potentially allowed in the MUA-20 district consistent with Goal 11. None of them have been used to justify the exception. When determining whether or not the land is physically developed, Staff considered the development patterns on this site using the submitted application materials, site photos in the code compliance record, aerial photos, site plans and a site visit.

Exception Requirements for Land Irrevocably Committed to Other Uses Relating to the Goal 11 Exception Request (OAR 660-004-0028)

6.1.2.2 **ORS 197.732(1)(b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable;**

(* * *)

Staff: Whether or not land subject to the exception is irrevocably committed to uses not allowed by the applicable goal is determined through review of each of the Goal 11 irrevocably committed standards in OAR 660-004-0028 and OAR 660-014-0030. The necessary irrevocably committed findings required by sub (b) are provided below.

or....(ORS 197.732(1))...

(c) The following standards are met:
(A) Reasons justify why the state policy embodied in the applicable goals should not apply;
(B) Areas that do not require a new exception cannot reasonably accommodate the use;
(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and
(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

Staff: The standards of sub (c) above apply only to a "reasons" goal exception request which has not been requested. These standards are not applicable.

6.1.2.2.1 **OAR 660-004-0028(1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable.**

(a) "committed exception" is taken in accordance with ORS 197.732(1) (b), Goal 2 Part II (b), and with the provisions of this rule;

(b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception is taken;

(c) An "applicable goal," as used in this section, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.

Applicant: (a) The applicant has applied for a committed exception, (b) The applicant has applied for a committed exception for the developed areas, (c) The applicant has presented factual findings to each relevant goal to establish compatibility or no adverse impact related to the goal's purpose.

Staff: The applicant has applied for an irrevocably committed exception to Goal 11 for two portions of the property. The first is an area west of the boat yard at the north end of the property and the second is the proposed in-water expansion area at the south end of the property (Exhibit 1). The findings below address the applicable statutes and establish that the areas identified by the applicant qualify for a committed exception.

The applicant is requesting the exception to Goal 11 to allow the extension of public facilities outside of the urban growth boundary (UGB). Goal 11, "Planning" Section (A)(2) confirms public facilities and services (such as sewer and water) should be provided at levels appropriate for rural use only and should not support urban uses. More central to this request, OAR 660-011-0060(4) allows establishment and/or extension of a sewer system outside a UGB only in order to mitigate a public health hazard which is not relevant in this case. Accordingly, an exception to Goal 11 is required in order to extend the sewer system on this property.

6.1.2.2.2 OAR 660-004-0028(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

(a) The characteristics of the exception area;

Applicant: Rocky Pointe Marina occupies a long narrow strip of waterfront land 3,150 ft long by approximately 16 feet wide at the southern end and increasing in width to just over 400 feet at the northern end with a total of 16.22 acres of which approximately 10 acres along the water are fully developed with road, parking, boatyard and support facilities. The remaining land is a lake, wetlands, natural areas, and landscaping that lay between the marina road and the railroad. The land itself is primarily basalt rock.

Staff: Rather than describing the characteristics of the two committed exception areas, the applicant provided a general description of the Rocky Pointe Marina property. Two distinct portions of the property are proposed in conjunction with the Goal 11 irrevocably committed exception (Exhibit 1). The most prominent area, and the area most central to this application, is the proposed in-water expansion site south of the existing moorage. Within this DSL lease area the applicant intends to construct new residential houseboat slips, boat slips and a gangway ramp. A 25-foot by 40-foot floating community meeting room may also be placed in this area. The lease area is currently undeveloped and adds roughly 550-feet of channel frontage to the moorage. It extends into the channel approximately 200-feet. Upland areas adjacent to the in-water expansion area are not a part of the Goal 11 exception request.

The second portion of the property identified as part of the Goal 11 irrevocably committed exception is a wedge shaped area to the west of the boat yard restroom (Exhibit 1). This area

appears in recent aerial photos to be roughly half wetland area with the remaining area covered in grasses, shrubs and a few trees (Exhibits 11 & 17). The applicant provides a delineation of the narrow wetland in this area in Exhibit 17, which unfortunately does not also show the footprint of the proposed boat repair expansion area. This plan does note 1.2-acres of wetland impact with 1.81 acres of wetland mitigation although it is unclear from the plans exactly where mitigation is proposed. The applicant's Exhibit 17 shows where fill is proposed to create the boatyard expansion. Although no volume of fill is noted, cross sections suggest fill depth would reach roughly 10-feet deep towards the middle of the proposed fill pad.

The applicant is in the process of applying for a joint U.S. Army Corps of Engineers /Department of State Lands permit to fill the wetland portion of this exception area. The applicant has explained that this area must been included in the Goal 11 irrevocably committed exception request in the event the existing boat yard needed to be expanded in the future. Expansion of the boat yard could only occur to the west within the identified exception area because the yard abuts the northern property line, is hampered by the channel to the east and existing development to the south.

Staff does not agree that this area must be included in the exception request. Current code would allow extension of existing water and sewer lines to this portion of the property without the need for a goal exception because the sewer/water lines would not cross a parcel boundary and because the utilities in this area would not serve an additional dwelling. Further, a boat yard is not dependant upon sewer service.

(b) The characteristics of the adjacent lands;
(c) The relationship between the exception area and the lands adjacent to it; and

Applicant: On the water side, Rocky Pointe Marina leases 10.76 acres of submerged land from the DSL. On the backside of the property, the rocky terrain is sloped upward to the railroad tracks and continued upward slope to Hwy 30. The ground is primarily basalt rock... Rocky Pointe Marina's moorages are a water dependant use. The railroad and State Hwy 30 separate the property from forest and farmlands. On either end (upstream and downstream) are similar commercial marinas.

Staff: The in-water expansion area is a small undeveloped area approximately 550-feet long between two intensely developed moorages. Multnomah Channel forms the eastern boarder of the expansion area. Lower Rocky Point Road, a rail line and the Highway 30 corridor are found west of the expansion area.

The Policy 10 inventory conducted in 1997 by Multnomah County identified 27 floating dwellings associated with Happy Rock Moorage to the south. To the north, Hearing's Officer decision T3-01-005 permitted 14 floating dwellings associated with the McCuddy's operation. Measurements taken from recent aerial photos show approximately 1,300 lineal feet of waterfront currently dedicated to McCuddy's Marina's in-water development to the north, 2,500 lineal feet developed by Rocky Pointe and approximately 750-feet of frontage developed at Happy Rock to the south. Rocky Pointe is clearly the largest marina in the area with 40 floating dwellings and 2,500 feet of developed frontage. County tax assessment records list 1.93 acres associated with Happy Rock Moorage to the south and 13.98 acres associated with McCuddy's Marina to the north.

Policy 10 records confirm Happy Rock Moorage to the south is served by an on-site, DEQ approved urban style sewer system. Permit T3-01-005, in conjunction with Policy 10 records verify McCuddy's is served by a DEQ approved sewer system located at the Cassleman's Cove Marina to the north of McCuddy's and an on-site well which provides public water. The public drinking water source at the Happy Rock Moorage does not appear to come from a well. Under 'Water Source and Permits' within the Policy 10 inventory records, it states "*Each structure is responsible for their own on-board filtration system.*" The county's building permit file for Happy Rock contains an Oregon Water Resources Department Land Use Information Form describing the water use as 27 diversion points benefiting household uses with Multnomah Channel listed as the source of the proposed water use. Rocky Pointe Marina contains a DEQ approved sewer system only serving the site and a well. The applicant has applied for a water right from the Department of Water Resources to serve the proposed expansion.

The in-water expansion area is committed to urban development patterns considering the large, urban scale houseboat moorages that border it to the north and south and the degree to which existing urban sewer and water systems exist on surrounding properties.

The boat yard expansion area in Exhibit 1 at the north end of the property is surrounded by the Rocky Pointe boat yard to the east, McCuddy's Marina to the north, and natural area/wetland areas to the immediate west and south within the subject property. These natural areas form the western half of the subject property north of the access road entry point. West of the subject property the land use changes dramatically with the rail line and Highway 30 corridor. Unlike the in-water expansion area to serve dwellings, the applicant has not made the case that the boat yard expansion area is dependant upon water and sewer infrastructure. Expansion of the boat yard can be considered through the existing Community Service Use permit process. The inclusion in the Amendment to the goal exception for the proposed boat yard expansion area is not justified. Amendment of the goal exception plan in Exhibit 1 to remove the boat yard expansion area has been made a recommended condition of approval.

(d) The other relevant factors set forth in OAR 660-004-0028(6).

Applicant: The primary residential activity is on the waterway; a navigable waterway under the jurisdiction of the federal government. The use crosses the DSL jurisdiction with gangways and boat ramps. The residential use of terrestrial zoned land is limited to parking, boat yard, walking, loading, mail, and waste services.

Staff: Relevant factors of OAR 660-004-0028(6) are addressed below.

6.1.2.2.3 OAR 660-004-0028(3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1) (b), in Goal 2, Part II (b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:

(a) Farm use as defined in ORS 215.203;

Applicant: The exception area is basalt rock, wet, steeply sloped, or developed.

Staff: The applicant envisions expanding the boat yard at the north end of the property at some future date to accommodate a larger repair area. Expansion can only occur to the west because the current boat yard is bordered to the east by Multnomah Channel, to the north by a property line and to the south with parking. The applicant is in the process of applying for a permit to fill wetlands within the expansion area from the Department of State Lands/Army Corps of Engineers. The applicant has not demonstrated that the expansion of a boat repair yard is dependant on future sewer/water use. Therefore, there is no justification for an exception to Goal 11 in this area. No further analysis of the proposed boat yard will be provided. The following findings will focus on the proposed in-water expansion area.

Although the applicant is not requesting an exception to Goals 3 (Agricultural Lands) or 4 (Forest Land), it is still impracticable for the owner to farm the in-water exception area. The owner leases the in-water area from the state and an aquiculture based commercial farm use would not be practical amongst two adjacent commercial marina operations. An in-water forest land operation is not feasible under any circumstances. It is not reasonable to find that establishing a non-marina use would be appropriate considering the scale of the existing marina development in the vicinity of the exception area. Other than development in conjunction with an existing marina development, Staff finds establishing a different use allowed by Goal 11 is impractical within the Goal 11 irrevocably committed in-water exception area.

(b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and

Applicant: No logging or commercial forestry is practical. Land is either wet, basalt rock, or steeply sloped.

Staff: The in-water exception area can not be used to propagate or harvest commercial timber.

(c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).

Applicant: No commercial forest operation is proposed or practical.

Staff: Staff concurs with the applicant for the reasons outlined in the previous finding.

6.1.2.2.4 OAR 660-004-0028(4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.

Applicant: The applicant presents factual findings to each criterion that assert the area devoted for houseboat and sewer development is irrevocably committed to urban use.

Staff: Please see section (6) below for the applicant's response to each applicable factor and staff's associated findings.

6.1.2.2.5 OAR 660-004-0028(5) Findings of fact and a statement of reasons that land subject

to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands which are found to be irrevocably committed under this rule may include physically developed lands.

Applicant: All land asserted is developed. The exception requests include both land that is physically developed and land irrevocably committed to urban development. The area of expansion is into an area that is currently vacant. The vacant area had a dock, house, and piers. The house was removed many years ago, the dock removed several years ago, and the piers remain. The piers will be replaced as a result of this project.

Staff: Although the in-water exception area contains six old pilings that will be removed, these pilings do not render this area physically developed.

6.1.2.2.6 OAR 660-004-0028(6) Findings of fact for a committed exception shall address the following factors:

6.1.2.2.6(a) (a) Existing adjacent uses;

Applicant: Rocky Pointe Marina is a long narrow waterfront facility. The backside slopes upward and borders the railroad tracks and further up the hill is Hwy 30. At either end of the property are similar marinas, Happy Rock Moorage at the south, and Big Oak Marina on the north.

Staff: Adjacent lands have already been described in detail. The Goal 11 irrevocably committed exception area is located adjacent to existing marina uses served by sewer. The northern irrevocably committed to Goal 11 boat yard expansion area is not justified as previously stated. The proposed in-water residential expansion area is nearly identical in configuration and density to existing nearby in-water development to the north and south. The existence of sewer systems to support the nearby development justifies an exception for this area.

6.1.2.2.6(b) (b) Existing public facilities and services (water and sewer lines, etc.);

Applicant: All services and utilities exist on the site. Rocky Pointe Marina provides its own DEQ certified sewage collection and processing system and has its own water well, treatment and storage facility.

Staff: Water from an on-site well, fire department fire fighting connections, electrical transformers and private sewer service currently serves both upland and in-water development. The infrastructure currently extends the majority of the property's length. The applicant's engineer has estimated the existing septic load treated by the existing 40 floating homes, and other marina associated uses is approximately 5,000 gallons per day (gpd). The current DEQ permit allows treatment up to 6,500 gpd and according to DEQ, the on-site Davco wastewater treatment plant was designed to handle up to 10,000 gpd. Stuart L Cato, PE, CWRE has confirmed that "*based on the existing flows and treatment levels it is our opinion that the proposed addition of 36 more floating homes will not overload the package (sewage) treatment plant with a permitted average monthly flow of 6,500 GPD.*"

The applicant has received support from local police and fire districts (Exhibits 40 and 41).

The applicant has applied for a water right from the Department of Water Resources to use the existing well to serve the additional floating homes. Given the exception area is mapped as suitable for houseboats within the Sauvie Island Rural Area Plan Policy 26, the capability of service responders was considered when that policy decision was made. Given this information, it is reasonable to conclude that the private sewer system can serve the expansion area.

6.1.2.2.6 (c) Parcel size and ownership patterns of the exception area and adjacent lands:

Applicant: There were 7 parcels of land owned by Stan Tonneson LLC and leased to Rocky Pointe Marina Portland LLC. These lots have been consolidated into one lot of record.

Previous Tax Lots Existing Lots of Record		*Consolidated Tax Lots*		*Proposed Lot of Record*	
TL400	*8.5 acres*	*TL400*	*8.73 acres*	*1 lot*	*16.22 acres*
TL100	*8.17*	*TL100*	*7.49*		
TL200	*.33*				
TL300	*.39*				
TL400	*.12*				
TL500	*.20*				
TL600	*.09*				
Total	*17.8 acres*		*16.22 acres*	*16.22 acres*	

The land to the west is the railroad and then State Hwy 30. To the south is Happy Rock Marina owned by Ginger Curtis and to the north is Big Oak Marina owned by the McCuddy family.

Staff: The seven properties referenced by the applicant have been consolidated into one parcel under common ownership as previously described. The in-water exception area is located within the channel east of this 16.22 acre parcel. Adjacent marinas to the south and north are owned by two different parties and lands to the west and east are owned by the State of Oregon. Ownership patterns within the exception area are identical to in-water areas to the north and south with the lands owned by the Sate of Oregon and leased to the adjacent private property owner(s).

(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goal were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in them selves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and non-resource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining these parcels;

Applicant: The current configuration of Rocky Pointe Marina was permitted by Multnomah

County in 1993 as a Community Service Conditional use. The existing roads and services date back to the 1940's and were upgraded at that time. These include a paved driveway the entire length of the property.

Underground water lines, sewer lines, telephone lines, on site waste water processing and on site water well, treatment and storage to all 3 access ramps to the marina docks and to the boat repair facility at the north end. An Portland General Electric overhead power line and easement runs the length of the property for the benefit of Columbia Public Utility District.

The parcels of land to the south; TL 400, TL500 and TL600, were acquired in 2002 and added to Rocky Pointe Marina property. There is an existing road on this land that is continuous with the Rocky Pointe driveway. This driveway leads to the marina to the south, Happy Rock Marina, for which they have a permanent easement over Rocky Pointe's property. The proposed expansion will be serviced and accessed by a new five foot gangway ramp. In 2006, Statewide Planning Goal 14 administrative rule came into effect and limited permanent single-family structures to one per tax parcel outside of an Urban Growth Boundary.

Staff: The applicant has explained how the current development patterns on the site were established over time. The parcel is not considered resource land. An exception to the resource goals were taken by the County when the property was first zoned Multiple Use Agriculture-20 on October 6th, 1977 (i.e. an exception zone). The reason the exception areas are unsuitable for resource uses is a function of the proximity and nature of existing commercial marina development along the channel.

Houseboat communities along the channel have existed for over a hundred years. Once little more than floating shacks, houseboat moorages today offer all the amenities of traditional homes. The establishment of moorage communities in this area predates the establishment of statewide planning goals and zoning regulations in Multnomah County. The longevity and intensity of moorage communities have had great influence on the channel's landscape. Moorage sites are limited in the county, and demand for moorage space is high according to the owner.

Interestingly, the Rocky Pointe site was originally used as a ferry landing serving Sauvie Island and contained a school, post office, store and sawmill. The site was quarried for construction rock between the 1920's and 1930's with the first beginnings of the marina seen in the 1940s. Major expansions to the operation occurred in the 1970s and 1990s.

(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the lands actual uses. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to e irrevocably committed if they stand alone amidst larger farm of forest operations, or are buffered from such operations.

Applicant: Rocky Pointe Marina was 7 lots of record that has been consolidated into a single lot of record.

Staff: These factors were considered. The request involves one 16.22 acre developed parcel with no contiguous parcel under the same ownership. The applicant is not arguing small parcel size as justification for the exception.

6.1.2.2.6(d) (d) Neighborhood and regional characteristics;

Applicant: Rocky Pointe Marina is located on the Multnomah Channel about seven miles downstream of the Willamette River and about three miles south of the small but growing community of Scappoose. The Channel has become the "other" boating facility area providing an alternative option to Hayden Island at Jantzen Beach. Multnomah Channel has over 200 floating homes and boat moorage for about 2,000 boats along its 21 mile length from Linnton to St Helens.

Staff: The proposed expansion is in keeping with the most dominant form of development in the neighborhood. Marina development along the west bank of Multnomah Channel extends 5,000 feet downstream and 1,000 feet upstream of the expansion area. The expansion will result in one continuous line of in-water marina/moorage development over one mile long formed by the Happy Rock Moorage on the upstream side, Rocky Pointe in the middle and the McCuddy's Marina on the downstream side. The expansion area will conform to and not destabilize the existing land use pattern in the neighborhood.

6.1.2.2.6(e) (e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

Applicant: Rocky Pointe Marina is a long narrow strip of waterfront land that is bound by Multnomah Channel and on the other side by the railroad tracks and then State Hwy 30 beyond the railroad. There is a power line easement for high voltage lines down the center of the property. There is a continuous roadway and parking from one end to the other. There are mitigated wetlands.

Staff: Staff concurs with the applicant. This exception area is surrounded by both natural and man-made features separating the exception areas from adjacent resource lands. Although not mentioned by the applicant specifically, a small but steep rock outcrop separates the in-water expansion area and access road from lands to the west. Although these features impede practical resource use of the these areas by limiting access, the greatest constraints come from the low lying flood prone land, and presence of an access road, wetland areas, hydric soils, rock exposure and general proximity to these features which simply make commercial resource (farm and forest) use of the land impractical.

6.1.2.2.6(f) (f) Physical development according to OAR 660-004-0025; and

Applicant: Rocky Pointe Marina is physically developed with roads, underground utilities, commercial buildings and related facilities to the extent that farming and forestry are not practical if not impossible considering the terrain, soil, size and location.

Staff: OAR 660-004-0025(2) describes physical development as including amenities such as

structures, roads, sewer and water facilities and utility facilities. The in-water Goal 11 committed exception area does not contain physical development as defined above with the exception to six old, abandoned piers proposed to be removed to facilitate expansion.

6.1.2.2.6(g) (g) Other relevant factors.

Applicant: The primary residential activity is on the waterway; a navigable waterway under the jurisdiction of the federal government. The residential use crosses the State jurisdictions with gangways and boat ramps. The residential use of terrestrial zoned land is limited to parking, boat yard, walking, loading, mail, and waste services.

Staff: All relevant factors have been considered. Staff agrees with the applicant that the residential activities primarily occur on the waterway.

6.1.2.2.7 OAR 660-004-0028(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map, or aerial photograph which shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.

Applicant: The applicant has provided an aerial photograph.

Staff: The applicant has labeled all existing development and delineated the exception area on site plans and aerial photos to support the exception request (Exhibits 1 – 4, 16, 17, 32 & 77). These photos show adjacent marina development closest to the exception area to the north and south. Staff's aerial photos in Exhibits 6, 11, 12 & 13 provide a larger view of the area showing more of the adjacent development patterns which, in conjunction with the plans submitted by the applicant, are sufficient evidence to justify the exception for the in-water area.

6.1.2.2.8 OAR 660-004-0028(8) The requirement for a map or aerial photograph in section (7) of this rule only applies to the following committed exceptions:

(a) Those adopted or amended as required by a Continuance Order dated after the effective date of section 7 of this rule; and

Applicant: A continuance order is not in effect.

Staff: Staff concurs – not applicable.

(b) Those adopted or amended after the effective date of section (7) of this rule by a jurisdiction with an acknowledged comprehensive plan and land use regulations.

Applicant: Multnomah County's Comprehensive Plan specifically allows and supports houseboats in this area as a conditional use. The plan was acknowledged by the State....(In Conclusion)...The sewer system exists and has been permitted by DEQ. The sewer system performs important ecological and public health functions. Individual systems are not practical or desirable.

Staff: This provision justifies the need for the maps and aerial photos which have been provided.

In conclusion, the applicant has submitted the necessary evidence to demonstrate the in-water Goal 11 exception area in Exhibit 1 qualifies for a committed exception; and, is irrevocably committed to uses not allowed by the applicable goal because existing adjacent urban scale houseboat moorages, water and sewer infrastructure, and physical development constraints (related to topography, transportation corridors and water bodies) commit the land to similar uses. The applicant has not justified the proposed upland boat yard expansion area because the boatyard expansion is not dependant on sewer and water utilities. Expansion of the boatyard can be considered under current county code.

6.1.2.3 GOAL 14 PHYSICALLY DEVELOPED & IRREVOCABLY COMMITTED EXCEPTION FINDINGS (OAR 660-014-0030)

6.1.2.3.1 Rural Lands Irrevocably Committed to Urban Levels of Development (OAR 660-014-0030)

OAR 660-014-0030(1) A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standards (e.g., that it is not appropriate to apply Goal's 14 requirement prohibiting the establishment of urban uses on rural land). If a conclusion that land is irrevocably committed to urban levels of development is supported, the 4 factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.

Applicant: Rocky Pointe Marina has been on a developed site since the late 1930's. The original shop/office/fuel dock and caretaker home are still on site and in use. There has been boat repair and fueling on site since the 1950's. Aerial photographs confirm the marina existence in 1938. The current marina was permitted by Multnomah County in 1993 as a Community Service Conditional Use. The area is 16.22 acres. The approval allowed for 40 floating home, 150 boat slips, 7 boatsheds and 166 auto parking spaces. Zoning for the property is Multiple Use Agriculture-20 with zoning overlays for the 100-year floodplain, the Willamette River Greenway, Sauvie Island riparian area, and for wetlands designated on the National Wetlands Inventory.

The shape of the property is a narrow triangle 3,150 feet long along the water and ranging in width from 18 feet at the southern end and 500 feet at the northern end. There is a road running the entire length of the property with a boat repair facility at the northern end. Parking is on either side of the road. There is a lake on the west side of the road. The existing road, parking and upland facilities occupy approximately 10 acres of all previously disturbed land. The balance of land is landscaping and natural areas intermixed within the property. The proposed expansion is within the existing developed property.

The conclusion is that this property is irrevocably committed to an urban level of development as it has been developed and in use for almost 80 years. The property, mostly rock, is completely built out as a marina along the shoreline with all facilities in place. The area of expansion has had docks and piers and a house in the past. The house was removed many years ago, docks were removed several years ago, and the piers remain. The piers will be removed as a result of this project and new environmentally sound piers and docks will be

constructed.

Staff: As a point of rule structure clarification - OAR Division 14 groups irrevocability committed and physically developed criteria under one section (OAR 660-014-0030), unlike Division 004 which more cleanly separates physically developed criteria under section 660-004-0025 and irrevocably committed criteria under section 660-004-0028. Staff confirmed with DLCD staff that OAR 660-014-0030, titled *'Rural Lands Irrevocably Committed to Urban Levels of Development'*, must be used to evaluate a request involving both an irrevocably committed and physically developed exception request to Goal 14, despite the section title.

The applicant is requesting a physically developed Goal 14 exception request for the areas surrounding all existing in-water and upland developed areas and a Goal 14 irrevocably committed exception request for the wedge shaped area west of the boat yard, the in-water expansion area and the narrow up-land property located along the access road west of the proposed expansion area towards the southern end of the property. This request has been made so that the county can authorize deviation from the following rule preventing further residential expansion at the Rocky Pointe Marina:

Single Family Dwelling per Parcel Restriction (OAR 660-004-0040(7)(f))

...A local government shall not allow more than one permanent single-family dwelling to be placed on a lot or parcel in a rural residential area...

Findings related to the above described exception requests will all be made under the following OAR 660-014-0030 standards to evaluate whether these rural lands are irrevocably committed to urban levels of development, and/or physically developed to the extent that it is not appropriate to apply the Goal 14 requirement prohibiting the establishment of urban uses on rural land. DLCD staff also clarified that it is possible to find land is irrevocably committed *because* it is physically developed (i.e. clearing the higher evidentiary bar clears the lower one as well).

6.1.2.3.2 OAR 660-014-0030(2) A decision that land has been built upon at urban densities or irrevocably committed to urban levels of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development should be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to urban levels of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.

Applicant: The following facilities and structures exist on the property and with water lease. See attached map keyed to the following list;

Upland

A- roadway: approximately 2,800 feet long by 20 to 30 feet wide
B- water well house, storage and treatment
C-recycling/garbage/mail center upper ramp/marina
D- recycling/garbage station middle ramp/marina
E- recycling/garbage station lower ramp/marina
F- security gate

G- parking – 166 spaces
H- trailer storage
I- boat yard restroom
J- sewage treatment plant
K- evaporation pond
L- boatyard shop/office – 3,500 square feet
M- boat haul out pier
N- boat wash down pad and building – 2,000 square feet
O- boatyard – 40,000 square feet
P- power- Columbia River PUD
Q- telephone- CenturyTel
R- fuel storage tanks, above ground – 6,000 gallons

On the Water

1- docks – 3,700 feet of primary walkways – 3 ramps
2- marina office/store – 1,500 square feet
3- fuel dock – 100 foot landing with two gas and one diesel pump marine sewer pump out
4- restrooms/laundry – 4 sets of floating buildings each two toilets, two showers; washer and dryer.

Staff: The scope of the existing upland and in-water development has been described above, is illustrated on the applicant's site plan (Exhibit 4), and will be used to evaluate the committed and physically developed exception request to Goal 14.

6.1.2.3.3 OAR 660-014-0030(3) A decision that is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local preceding, that address the following:

6.1.2.3.3(a) (a) Size and extent of commercial and industrial uses;

Applicant: The marina contains a store, office, gas dock, and public restrooms including pumpouts to the traveling public to maintain clean rivers. The marina provides a full service repair and maintenance facility.

Staff: OAR 660-014-0030(2) states "*A decision that land has been built upon at urban densities or irrevocably committed to urban levels of development depends on the situation at the specific site*". Therefore; the focus of this physically developed and committed exception to Goal 14 is uses on the site and why those uses render compliance with Goal 14 impracticable.

Commercial uses and improvements supporting the commercial operation within the Goal 14 physically developed exception area, includes the boat yard, boat wash area, fuel dock and storage tanks, marina office and store, marina sewer pump out, restrooms, sewer system, and associated water and electric utilities. According to the Rocky Pointe Marina webpage[4], the following services are offered:

"Rocky Pointe Marina - Services

[4] http://www.rpmarina.com/marina_services.asp, accessed 3/2/09 at 11:24

Phone: *503-543-7003*

Boat slips *- We have 150 boat slips accommodating vessels 30' to 80' in covered and open moorage. We provide 30amp power and water at the docks. All slips are single berth with deep water to handle the draw of deep keeled boats. Mobile pump outs are located on each dock, as well as a pump out station at our fuel dock.*

Office/Store/Fuel Dock*- The floating marina office and store is open 7 days a week. Gas and diesel are available at a discount to our tenants. Beer, ice, pop, chips, snacks and ice cream are available in our store. A pump out station is located at the fuel dock for your convenience. Visa, Mastercard and Discover Card are happily accepted. In addition to the weekday office staff, Rocky Pointe Marina has an on site caretaker.*

Security*- Safety and security is very important to us. Rocky Pointe Marina is a gated community and has 16 security cameras recording activity throughout the facility. Our marina does monthly and annual inspections of electrical shore power connections and tests all new arriving tenants boats for proper ground fault and bonding to identify stray current that may potentially cause corrosion or electrocution.*

Boatyard*- A&D Yacht Services is conveniently located within our facility. A full service boatyard, they can work on your boat in the marina or tow your boat to the Travelift to service your boat. There is a qualified crew on site to help with emergencies as well as routine maintenance.*

Boat ramp*- Our boat ramp on site suitable for boats up to 20'. Launch is free for tenants or just $2 for the public. No public parking is available.*

Boat trailer parking*- Available for moorage tenants with trailers up to 20'*

Restrooms/Laundry*- Each section of marina has its own restrooms with showers and a coin-op laundry facility."*

This goal exception is required to expand the number of residential units rather than to establish or expand commercial or industrial uses. The proposed boat yard expansion area identified by the applicant as irrevocably committed by Goal 14 does not require a goal exception and can be reviewed under current county code. The size and extent of commercial uses is not relevant.

6.1.2.3.3(b) (b) Location, number and density of residential dwellings;

Finding: There are 40 floating homes. The average float size is 30ft wide by 50ft deep with the house size being smaller than the float. The houses are all moored on the outside docks facing the river and are intermixed with the 150 boat slips. (See attached map.)

Staff: The Rocky Pointe marina contains 40 floating dwellings associated with the 16.22 acre parcel. The dwellings are distributed amongst three separate docks, totaling roughly 2,500 lineal feet according to aerial photos.

6.1.2.3.3(c) (c) Location of urban levels of facilities and services; including at least public water and sewer facilities;

Applicant: All necessary utilities currently exist. See attached map for water well/storage, waste water collection and processing, power lines, phones lines, and propane lines.

Staff: According to Policy 10 inventory records, the subject property is served with a DEQ approved sewer system. Public water will serve the proposed development with an on-site well. The location of all sewer and water related improvements can be seen in Exhibit 16 which runs along the eastern side of the property starting at the southernmost gangway ramp. Goal 11 defines a public water system as a system for the provision of piped water for human consumption subject to regulation under ORS 448.119 to 448.285. These statutes apply to any water system serving water to public or commercial premises which are used by an average of at least 10 individuals daily at least 60 days each year (ORS 448.119).

The well's capacity is currently under the level requiring a permitted water right by the State Department of Water Resources. Although the applicant has just begun the permitting process to establish a water right commensurate with the proposed demand, a department staff member indicated to staff over the phone that it is more likely than not that the permit will be approved. This is because the existing well provides the majority of the yield needed to serve the proposal and because Multnomah Channel is not a designated groundwater limited area. The state's water right permitting process is estimated to take 9-12 months.

6.1.2.3.3(d) (d) Parcel sizes and ownership patterns.

Applicant: There were 7 parcels of land owned by Stan Tonneson LLC and leased to Rocky Pointe Marina Portland LLC. They have been consolidated into a single lot of record. The previous lot numbers and sizes are listed below from North to South, see map for additional detail

Previous Tax Lots Existing Lots of Record		***Consolidated Tax Lots***		***Proposed Lot of Record***	
TL400	*8.5 acres*	*TL400*	*8.73 acres*	*1 lot*	*16.22 acres*
TL100	*8.17*	*TL100*	*7.49*		
TL200	*.33*				
TL300	*.39*				
TL400	*.12*				
TL500	*.20*				
TL600	*.09*				
Total	*17.8*	*16.22 acres*	*16.22 acres*		

Staff: According to county tax assessment records, the 16.22 acre Rocky Pointe Marina is owned by Stanley and Jenice Tonneson. Exception areas within the channel are owned by the State of Oregon and leased by the Tonnesons.

6.1.2.3.4 OAR 660-014-0030(4) A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban development rather than a rural level of development.

Applicant: Rocky Pointe Marina was established in the 1930's and has been in existence on the same site providing boat moorage, floating home moorage, boat repair, boat fueling station, boathouse construction, public boat ramp, public restrooms and floating general store. There is a paved road the entire length of the property parallel to the water's edge making the waterfront land accessible. The northern part of the road is a driveway on the Rocky Pointe Marina. The southern part, south of the County's road, is an easement across the Rocky Pointe property to the Happy Rock Marina (south), upstream from Rocky Point. The remainder of land is either lake, wetlands, natural or landscape areas.

Staff: Justification for the Goal 14 physically developed and irrevocably committed exception is limited to the areas serving the existing and proposed residential and residential accessory uses. Valid exception areas must specifically be justified either by the presence of physical improvements necessary to serve the dwellings or by committing the land to urban level development by proximity to the other floating homes.

The justifiable areas for the Goal 14 physically developed exception include all existing docks, gangway ramps, access, parking areas, the footprint of all utilities serving the floating dwellings including sewer and water, the in-water expansion area and the land around the access road to the west. Two small natural areas on either side of Lower Rocky Point Road as the road enters the site are used by tenants for picnics, dog walking, etc. These small recreational areas are committed via recreational support of the residential uses. The 27 floating dwellings to the immediate south of the expansion area further support a conclusion that the area is committed to urban residential densities. The proposed expansion area fills the gap between these two existing urban areas.

The Goal 14 exception areas proposed by the applicant exceed the areas used to serve the existing and proposed residential uses described above and therefore must be modified. There is no clear relationship to some of the areas identified and the reason/need for the Goal 14 exception. Areas supporting commercial marina activities that can operate independent of the houseboats do not qualify for an exception to Goal 14. This includes the future boatyard expansion area, existing boatyard, boatyard office, boat haul out pier, boat wash down pad and building, boatyard restroom, fuel dock, marine sewer pump out station, and four restroom/laundry facilities. The Goal 14 exception areas should be modified to exclude these areas dedicated to commercial uses that could function independent of the homes. The scope of these existing and proposed commercial activities does not exceed the scope in the Oregon Administrative Rule and therefore a goal exception is not necessary to continue with these uses.

6.1.2.3.5 OAR 660-014-0030(5) More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities.

Applicant: Rocky Pointe Marina is built to urban densities.

Staff: We concur. There is no need for more detailed findings.

6.1.2.4 Single Family Dwelling per Parcel Restriction (OAR 660-004-0040(7)(f))

...A local government shall not allow more than one permanent single-family dwelling to

be placed on a lot or parcel in a rural residential area....

Applicant: The applicant requests a goal exception for this provision. The Multiple Use Agriculture-20 zone that is considered a type of rural residential zone. The applicant requests a goal exception for this provision...(In Conclusion)*...The primary residential activity is on the waterway; a navigable waterway under the jurisdiction of the federal government. The residential use crosses the State jurisdictions with gangways and boat ramps. The use of terrestrial zoned land is limited to parking, boat yard, walking, loading, mail, and waste services.*

The development is infill, filling a small stretch of currently unused waterway between the existing Rocky Pointe Marina and Happy Rock Marina upstream. No additional expansion is possible. The expansion will not result in additional restrooms, expansion of the store, or any other "urban use".

Staff: The provisions of OAR 660-004-0040 (Application of Goal 14 to Rural Residential Areas) do not apply considering the request is for an exception to Goal 14. OAR 660-004-0040 implements Goal 14, with the single family dwelling per parcel provision of 660-004-0040(7)(f) being the primary driver behind this exception request.

(* * *)

6.1.3 ORS 197.732(4) A local government approving or denying a proposed exception shall set forth findings of fact and a statement of reasons that demonstrate that the standards of subsection (2) of this section have or have not been met.

Staff: This report sets forth the necessary findings of facts.

6.1.4 ORS 197.732(5) Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.

Staff: The public notice for the Planning Commission hearing met this requirement.

(* * *)

6.1.5 MCC 37.0705(A)(2) The proposal conforms to the intent of relevant policies in the comprehensive plan or that the plan policies do not apply. In the case of a land use plan map amendment for a commercial, industrial, or public designation, evidence must also be presented that the plan does not provide adequate areas in appropriate locations for the proposed use; and

Applicant: The proposed houseboat expansion is a residential use.

Staff: Although the exception areas encompass existing and proposed residential, non-residential and commercial uses associated with the marina and boat yard; The residential

portion of the request is the only use requiring the goal exceptions.

Comprehensive Framework Plan Policy 26 (Houseboats) references a number of other applicable Plans Policies including Policy 2 (Off-Site Effects), 13 (Air, Water, Noise), 15 (Significant Environmental Concern), 16 (Natural Resources), 21 (Housing Choice), 24 (Housing Location), and 38 (Facilities). These overarching policies will be used in the following findings for context, where appropriate. Rural Area Plan (RAP) Policies explaining how the Special Plan Area is intended to be used (RAP Policy 13), what density is acceptable (RAP Policy 14) and what criteria shall be used to evaluate impacts (RAP Policy 15) will also be considered. The RAP Policies are part of the overall Multnomah County Comprehensive Framework Plan and are intended to present decision making guidelines within the Sauvie Island/Multnomah Channel Rural Plan Area.

6.1.5.1 RURAL AREA PLAN POLICY 13:

Multnomah County should adopt procedures to allow existing moorage/marina to become a 'special plan area' under MCC 11.15.6600 [Staff: now MCC 34.5000 *et seq.*] **at the initiation of the property owner, to determine uses and densities allowed for each moorage on the channel. The special plan area designation would be allowed when the property owner requests an expansion or alteration, or for any new marina/moorage developments. The provisions of the existing Conditional Use criteria would still be in place in addition to the new special planning area procedure.**

Discussion: Each moorage/marina shall be allowed to enter into a special plan area (an existing part of the Multnomah County Zoning Code, which needs some minor amendments to fit the Multnomah Channel situation) procedure with Multnomah County to adopt essentially a master plan or comprehensive plan for each moorage/marina. As an attempt to take all issues into consideration, special plans can determine by looking at each existing or proposed moorage/marina on a case-by-case basis regarding the density, service levels and legal status of the property. At the County's initiation (no application fees), each individual marina/moorage could receive a special plan area designation which would be an overlay designation for each moorage and marina on the Channel. The special plan area will help reduce duplication of efforts by considering the Willamette River Greenway concepts concurrently with other code criteria.

STRATEGY: Multnomah County shall implement this policy by amending the Special Plan Area code of the Zoning Ordinance and by requiring any moorage or marina which is determined to be in violation of the Zoning Code or which proposes changes to an existing moorage to go through the Special Plan Area process.

Applicant: The result of this exception would be to make Rocky Pointe a Special Plan Area.

Staff: The applicant is requesting a SPA designation within the exception areas (i.e. zone change from MUA-20 to MUA-20 with a SPA overlay). With the SPA they are seeking criteria that would lift the 1 houseboat per 50 foot (i.e. 1:50 cap) of waterfront frontage carrying capacity standard in the Conditional Use provisions for moorages. Rural Area Plan Policy 13 indicates the **SPA process shall be used to determine densities for a moorage on a case-by-case basis** and that **all Conditional Use criteria would still be in place** in addition to the new special planning area procedure.

Multnomah County Conditional Use Code 34.6755 caps houseboat density at 1 houseboat per 50-feet (1:50) of waterfront frontage which the applicant is proposing to exceed by 13 dwellings.

The question becomes whether Policy 13 requires that the SPA not exceed the Conditional Use houseboat cap of 1:50, or if it can be determined at the time of SPA review that the 1:50 cap can be exceeded. Although the two statements in bold above could appear to conflict, this would not necessarily be the case for all SPA proposals. A SPA master plan, for example, could involve replacing existing boat slips with covered boathouses (floating boat garages) in which case the appropriate density of the non-residential boathouses could be considered through the SPA process. In this case, the 1:50 cap on residential houseboats would not be applicable to the request which would be subject to all applicable Conditional Use criteria.

Another hypothetical example could the replacement of boat slips with houseboats so long as houseboat density does not exceed one per 50 feet of the parcel's waterfront frontage. In summary; The SPA analysis is not limited to residential densities and it appears possible to add dwellings through the SPA process up to a 1:50 density.

It is clear from select 'Discussion' and 'Strategy' language of Policy 13 above that future code amendments were intended to specifically address moorage/marina reviews within the SPA portion of county code. These revisions never occurred. It is staff's view that the Planning Commission must first determine whether it is appropriate to use Policy 13 (in combination with Policies 14, 15 & zone change criteria MCC 370705(B)), to consider this request to exceed the 1:50 residential density cap as proposed[5]. Secondly, if the Commission interprets the policies to allow a request of this nature, the Planning Commission must decide whether or not the applicant has justified the SPA overlay designation.

The Hearing's Officer through a Conditional Use review is the appropriate review body to determine the actual number of new houseboats that should be allowed. The Planning Commission will need to set a maximum appropriate residential density for the Hearing's Officer to consider in the event the Planning Commission believes the SPA designation is justified. In determining whether or not to apply a SPA designation the Commission must consider existing and proposed improvements.

6.1.5.2 RURAL AREA PLAN POLICY 14:

The overall density for each existing moorage/marina that chooses to go through the special planning area process shall not exceed the existing levels as measured by factors such as area and length of docks and number of slips (existing in the Multnomah County Moorage Report Listing of Float houses and Watercraft as of July 1, 1997 and reconciled through supplemental information provided by the moorage owner). The actual number of slips for each moorage/marina shall be determined at the time a special plan area is approved for the moorage/marina. The specific plan will look at such things as 'legally existing' issues, non-conforming status and carrying capacity of the land to determine the number of dwellings and other uses allowed in each marina/moorage.

[5] Using the applicant's estimate of 3,150 linear feet of waterfront parcel frontage, the 76 houseboats will result in a houseboat to frontage ratio of 1:41.

STRATEGY: Multnomah County shall implement this policy at the time each special plan area is adopted.

Applicant: Rocky Pointe Marina will also be reviewed through a conditional use process and, as proposed, complies with all dimensional standards.

Staff: Policy 14 states density within a SPA shall not exceed existing levels. This suggests at first glance that expansion of existing development may not be possible through the SPA review which is intended to establish more flexible and diversified standards and procedures (MCC 34.5000). Policy 14 indicates existing development levels shall be measured by factors such as area and length of docks and number of slips reconciled through the Policy 10 moorage inventory process. The two hypothetical SPA requests introduced in the previous finding would also not be in conflict with the Policy 14 limitation on expansion because no new slips or additional dock would be added to the operation in either example. Staff is not confident the applicant's request to expand the operation to the south is allowable per Policy 14 for the reasons explained below.

The applicant has submitted three different approaches explaining why the proposed density does not exceed existing levels. Staff will briefly summarize each argument below, referencing the materials submitted by exhibit which contains more details.

Density Analysis #1 – Specific vs. General Criteria & Dock Frontage/Number of Slips

The first analysis, prepared by Steve Morasch of Schwabe, Williamson & Wyatt, opens with his opinion that Rural Area Plan Policy 13 allows consideration of residential expansion beyond the 1:50 threshold through the SPA process because this case-by-case density allowance supersedes the more general density provision of MCC 34.6755 (i.e. a basic rule of statutory construction is that when two provisions conflict, the more specific provision governs). This analysis can be found in Exhibit 29. Staff has already explained why no conflict exists between the two requirements.

Mr. Morasch states that even with the addition of the 36 dwellings and new dock, the overall density will not be increased as measured by length of docks and number of slips and reconciled through the Policy 10 marina inventory process. The 1997 Policy 10 inventory confirmed that *"as of June 24th, 1998, Rocky Pointe Marina was operating within their existing permits."* The marina was permitted in 1993[6] for 197 slips (40 houseboats, 150 boat slips and 7 boathouse spaces). The marina currently contains 197 slips according to Mr. Morasch's analysis (39 floating homes, 150 boat slips and 8 boat houses). The additional boathouse (floating garage) does not appear to have been permitted by the County. Although Mr. Morasch references 39 floating homes, the applicant has indicated the operation currently serves 40 floating homes.

Mr. Morasch calculates 2,276 linear feet of dock, with twice this much frontage used today considering both sides of the dock are used to secure floating homes, boats, boathouses and

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[6] Permits CS 1-93, HV 1-93, WRG 1-93 and CU 7-93

[7] The owner's ratio exceeds 1.00 because the owner included gangway ramps extending perpendicular to the waterfront in the calculations.

miscellaneous marina related uses (4,552 feet total frontage). The length of dock and description of dock usage provided by Mr. Morasch matches plans approved in 1993 and measurements taken from recent aerial photos. Mr. Morasch's analysis indicates the new 520-feet of dock will contribute another 1,040 linear feet of dock to the operation along with an additional 278 feet of dock freed up through the permanent removal of 16 boat slips. The analysis continues that because the proposal offers 5,870 feet of dock frontage (1,318 more lineal feet than exists now) density between structures will be reduced by the expansion because development would be spread out further apart, thus decreasing density.

It seems counterintuitive that adding additional dwellings would reduce density and it is not clear that spreading development further apart meets the policy intent of retaining density at existing levels. It should also be noted that Mr. Morasch's analysis also places equal value on residential versus non-residential dock frontage which may not be appropriate considering residential uses put greater demands on a site than non-residential uses. On the other hand, Policies 13 and 14 do not appear to distinguish between various uses.

After carefully reviewing Mr. Morasch's analysis, Staff believes a problematic assumption was used within the calculations. This observation was conveyed to the applicant who offered no additional clarification. On Page 4, the analysis assumes 1,318 feet of new dock will be available for new floating homes. This was calculated by adding the 278 feet of frontage freed up by the removal of 16 boat slips and the 1,040 feet of new dock frontage proposed (520-feet x 2 sides). Mr. Morasch uses this 1,318 total to find the current 30.821 feet of dock frontage per dwelling will be reduced because the additional 1,318 feet of frontage available after construction would technically allow an additional 42.76 dwellings which exceeds the number proposed.

The apparent problem with this conclusion is that not all 1,318 feet of frontage freed up by the proposal will be used for dwellings. The application narrative states in a number of locations that the new dock side facing the bank will be used for boat slips rather than dwellings and that the side facing the channel will be used for homes. This would allow only 520-feet of dock frontage for homes, which would provide room for only 16.8 dwellings assuming Mr. Morasch's 30.821 feet of dock frontage required per floating home. By Staff's calculations, the 278 feet of dock frontage freed up by the removal of 16 boat slips would provide room for only 9 more dwellings totaling roughly 25 dwellings rather than the 36 proposed. In addition, removing only 16 boat slips while adding 36 new home slips simply adds additional slips to the operation (i.e. increases density) which is a Policy 14 metric not squarely addressed in the analysis.

Staff also has concerns that establishing all 25 dwellings would not seem to provide the additional space between structures as discussed in the narrative because all space created would now be occupied with new homes. The creation of more space between structures seems to be the overarching point to the analysis concluding that density is reduced. The exception plans also show only 15 channel side spaces along the new dock for homes rather than the 16.8 possible by the calculations above which would seem to drop the number of possible dwellings down somewhere around 23 while maintaining existing residential density within the SPA.

<u>To summarize; Staff does not concur with Mr. Morasch's analysis in Exhibit 29 finding density will be reduced using factors such as dock length and number of slips. Staff is not convinced the numeric assumptions used are accurate, and does not agree that adding 36 slips while</u>

removing only 16 slips reduces density.

Density Analysis #2 – Dock Frontage per. Parcel Frontage

The second analysis was provided by the owner to justify a finding that the density is reduced. This approach is based on the ratio of parcel frontage to dock length. The spreadsheet provided is presented in Exhibit 31. The crux of the argument appears to be that currently, 1.38[7] linear feet of dock is associated with each linear foot of parcel frontage, which will be reduced to 1.29 linear feet of dock with the new expansion. The owner has mentioned that the reduction is due to the purchase of additional land in 2001 and that even though he is adding dwellings, the resulting development will now have more room and therefore density will be decreased. The applicant provided an interesting analogy relating to a party – i.e. even though additional people showed up to a party, it did not become more crowded and density between the guests was reduced when the party was moved to a larger room. Within this analogy, the room was enlarged with the 2001 land purchase.

A problem with this analysis could be that different frontage lengths are being used for each calculation. The first calculation resulting in 1.38 feet of dock per foot of frontage uses 2,580 feet of frontage, whereas the second calculation uses 3,150 feet of frontage which reduces the ratio from 1.38 to 1.29. The owner claims this methodology is appropriate because he only owned 2,580 feet of frontage in 1997 but now owns 3,150 feet of frontage after purchasing a parcel in 2001. Staff estimates the density would increase from 1.12 (3,555 ÷ 3150) to 1.29 (4,075 ÷ 3150) when comparing the existing lineal feet of dock associated with the entire parcel's water frontage today versus the resulting lineal feet of dock associated with the entire parcel's water frontage after the proposal is constructed.

On the other hand, the owner's analysis could be valid in comparing the parcel frontage length in 1997 (2,580 feet) to the current frontage length (3,150 feet) when one looks closely at the Policy 14 language: "*The overall density for each existing moorage/marina that chooses to go through the special planning area process shall not exceed the existing levels as measured by factors such as area and length of docks and number of slips (existing in the Multnomah County Moorage Report Listing of Float houses and Watercraft* ***as of July 1, 1997*** *and reconciled through supplemental information provided by the moorage owner).*" The owner asserts he has presented an apples to apples frontage analysis because he did not own the parcel adjacent to the in-water expansion area in 1997. It was purchased in 2001 with the intent of increasing the property frontage.

Regardless of the resulting frontage ratio, one potential problem with this overall argument is that Policy 14 focuses the density analysis on factors such as the length of docks and number of slips rather than the length of property frontage existing in 1997 versus that utilized by the current proposal. In summary, staff does not believe Policy 14 intended a ratio of land frontage to dock length to be considered in isolation for the density analysis.

Density Analysis #3 – Live aboard Boat Reductions

The third analysis concludes a reduction of over 32% in residential density would result, even with the addition of 36 additional floating homes, because the 76 boats currently being lived in full time will removed. Live aboard boats at the Rocky Pointe Marina are a compliance issue. The owner has not provided evidence that the county authorized the use of boats as residences

and; therefore, the removal of these residences can not be used to justify a reduction in density. Removal is not a choice and is required by county code. As a point of clarification, the owner indicates in Exhibit 30 that live aboard boats are in the process of being removed and that 23 boats remained in late 2008 rather than the 76 used in the calculations.

In conclusion, Staff is not able to find a reduction in density will result using any of the three analyses provided. The Planning Commission has the ability to make a policy decision regarding how density should be measured, using any of the three analyses as guidance, if needed. Each of the three approaches has impacts on the number of dwellings that could result. For example, density analysis #1 provided by Mr. Morasch does not distinguish between a residential and non-residential slip. Considering these uses as equal could overburden the carrying capacity of a property. Analysis #2 is limited to dock frontage versus parcel frontage and does not consider all relevant factors such as the number of slips. Analysis #3 relies on removal of unpermitted development to help mitigate the proposal impacts. It is Staff's position that the county must authorize any living unit within the Multiple Use Agriculture-20 zone regardless of the type of residential unit.

6.1.5.3 RURAL AREA PLAN POLICY 15:

Development on Multnomah Channel within Special Plan Areas shall be judged upon the following criteria.

Water Environmental

River Bank Protection - Development which protects the river bank from erosion caused by boat traffic.

Water Quality - Development which contributes to or does not significantly degrade water quality

Septic tanks/Sewage - Development which is more amenable to safe and sanitary sewage disposal, along with adequate upland facilities for disposal of sewage.

Fish and Wildlife - Development which contributes to or does not have a significant detrimental impact to the fish and wildlife in the water.

Land Environmental

Development in Wetland - Development which does not impact wetlands.

Traffic Increase - Development which minimizes increases in traffic on moorage access roads, on railroad crossings, and onto Highway 30.

Parking - Development which minimizes the amount of parking area necessary.

Ground Water Quality - Development which minimizes impacts to ground water quality.

Need for Restroom Facilities - Development which minimizes the need for additional communal restroom facilities to serve the proposed uses.

Land Wildlife - Development which minimizes impacts to land wildlife.

Necessary Utilities - Development which requires fewer utilities to serve proposed uses.

Floodplain Development - Development which minimizes placement of permanent structures and uses in the floodplain.

Accessory Structures - Development which minimizes the need for accessory on-land structures to serve proposed uses.

Aesthetic

Vegetation on Land - Development which minimizes the loss of land vegetation.

Visibility of Shore - Development which minimizes changes to natural shoreline features.

Massing and Scale - Development which has a human scale or architectural quality to it.

Diversity/Rural character - Development which maintains the existing diversity and rural character of Multnomah Channel.

Lighting - Development which minimizes night lighting of uses.

Vegetation/landscape on Water - Development which minimizes its visibility from the Multnomah Channel waterway.

Safety

Contribution to Channel Traffic - Development which minimizes Channel traffic.

Residential Link - Development with a permanent residence component which provides a human presence to both report emergencies and violations on Multnomah Channel.

Fire Hazard - Development which minimizes fire hazard.

Emergency Services - Development which minimizes the need for emergency services.

Economic - Development which provides economic value to Multnomah County in the form of assessment value and reduced need for public services.

Recreation

Contribution to Public Recreation - Development which contributes to public recreation opportunities on Multnomah Channel.

Protect Public's Right to Access and Utilize Public Waterway - Development which

promotes and does not infringe on public's ability to access the public waterway (Multnomah Channel) for recreational purposes.

Cumulative Impacts

The cumulative impacts of the proposed development on the overall carrying capacity of Multnomah Channel shall be considered and minimized.

The criteria listed shall be weighed and balanced by the hearing body considering each Special Plan Area so as to determine the most appropriate intensity and type of development allowed within each of these areas.

Discussion: It is not intended that each proposed use strictly meet each of the criteria listed above, but rather the criteria be used by the hearing body to weigh the appropriateness of different potential uses. It is assumed that each site within the boundaries of Policy 26 is appropriate for some sort of marine related development unless a single criteria weighs so strongly upon the site that it precludes all or some of the potential marine development uses.

STRATEGY: These criteria shall be included in the general special plan area code and shall be used to review proposed uses in each specific plan area is adopted.

Applicant: Rocky Pointe Marina has submitted a conditional use, site/design review and greenway request that will test its proposal against these criteria.

Staff: The criteria above must be considered at this time to determine if the location, density and type of development proposed within the SPA is appropriate for this site. The proposed SPA includes all Goal 11 and Goal 14 Physically Developed and Irrevocably Committed areas and all commercial and residential uses supported by the marina. The specific criteria are listed below, along with staff analysis considering the appropriateness of the proposed uses. It is staff's view that the SPA should not be approved because the intensity of residential uses proposed exceeds what is appropriate for this site when considering all of the criteria.

6.1.5.3.1 (Water Environmental)

Applicant: The marina has strict operating policies and is regularly inspected to ensure that there are no impacts to air and water. The houseboat population values and enforces quiet.

The majority of the property remains in natural condition. The bank is protected and impacted in relatively few locations; essentially only where the gangways and boat ramps are. A biological assessment reviewed the natural situation, assessed impacts, and dictated specific practices. The project requires permission from the Army Corp of Engineers and Department of Fish and Wildlife and the federal; level and the Oregon State Department of State Lands.

The site has been developed as a marina and related water dependant activities since the 1930's. The development minimizes impacts on the natural surroundings. The majority of development is on the water and upland from the bank. The banks are virtually untouched except for gangways and boat ramps.

River Bank Protection **- Development which protects the river bank from erosion caused by boat traffic.**

Water Quality **- Development which contributes to or does not significantly degrade water quality.**

Staff: This request is not yet subject to many of the county's specific development review standards, a number of which would directly evaluate environmental impacts to the riparian area, to fish and wildlife and to water quality. Examples would be the Willamette River Greenway and Grading and Erosion Control permits. These standards will be evaluated by a county Hearing's Officer as part of the Conditional Use Permit review in the event this goal exception is approved and acknowledged by the Department of Land Conservation and Development. This does not prevent the Planning Commission from evaluating the criteria as informed by the Comprehensive Framework Plan Policies, where direction is necessary.

Impacts to water quality are best achieved by providing a buffer between uses and water bodies and mitigating any loss of riparian vegetation to the greatest extent possible. Aerial photos show heavy vegetation running the length of the channel roughly 60-90 feet wide providing an adequate buffer between the upland development and the channel. All upland development is either associated with the in-water uses or in the case of the boat repair yard, is related to in-water uses in general and; therefore, should be located near the channel to consolidate the operation as much as possible. The applicant has indicated that any areas disturbed along the channel bank will be replanted with native landscaping. Disturbed bank areas are expected to be very limited and only associated with installation of the emergency 4-foot wide gangway access ramp serving the in-water expansion.

Rocky Pointe enforces a no-wake zone which will help limit bank erosion associated with boat traffic. The in-water development that will extend the length of the property will also act as a breakwater greatly reducing bank erosion from wave action. The on-site septic system is approved by DEQ, and of adequate capacity to serve the proposed expansion according to an engineer retained by the owner (Exhibits 35, 36, 47). Adequate sewage disposal is critical to water quality protection within the SPA.

Asphalt parking areas are sloped inland, away from the channel to allow runoff to filter through gravel areas and grass before entering the on-site wetland. The marina has a spill response plan in place in the event of a boat yard accident, offers a self contained recycled water boat wash down area to prevent bottom paint, etc. from migrating into the channel and the boat yard expansion area will be designed so that runoff from the existing and proposed boat yard surface will be channeled into a series of swales and filters running through the center of the boat yard. The marina also has received the 'Clean Marina' status from the Oregon State Marine Board attesting to its clean business practices.

The applicant has not adequately addressed how auto parking in support of the houseboats will be provided. Staff suspects the applicant will also need to place a large volume of fill near or in wetland areas to meet current parking standards which could have an impact on water quality. The applicant has not demonstrated the proposed development can fit on the property and meet all applicable standards without impacting wetland areas and/or the channel. The county's Community Service Conditional Use code requires that the owner provide at least two auto parking spaces for each new houseboat, and the parking area including all ingress and egress

thereto, shall located at least 2-feet above the 100-year floodplain (MCC 34.6760). The vast majority of the property is mapped within the 100-year floodplain (Exhibits 14 & 15) suggesting to staff fill materials would likely be needed to create an elevated parking area on the property. In 1993, the applicant estimated 7 – 9 feet of fill would be required at this site to elevate parking areas as required by County code (Exhibit 25). The Hearing's Officer granted a variance to this parking standard in 1993 (Exhibit 25) which can no longer be waived under the county's current variance provisions (MCC 34.7606(B)). Current code also limits fill placed within the floodplain to less than 5,000 cubic yards under the Large Fill provisions (34.6705(D)). The applicant has not demonstrated all development envisioned with the SPA can be accomplished using less than 5,000 cubic yards of fill material.

Many aspects of the SPA are designed to minimize impacts to water quality. Other aspects, such as the new parking areas, have not been fully explored and therefore the applicant has not demonstrated all development in support of the SPA meets this standard.

***Septic tanks/Sewage* - Development which is more amenable to safe and sanitary sewage disposal, along with adequate upland facilities for disposal of sewage.**

Staff: The DEQ permitted sewage treatment system is located within an upland facility which has been determined by an engineer to have adequate capacity to serve existing and proposed development.

***Fish and Wildlife* - Development which contributes to or does not have a significant detrimental impact to the fish and wildlife in the water.**

Staff: The Sauvie Island/Multnomah Channel Rural Area Plan's Natural and Environmental Resources assessment ranked Multnomah Channel as the fourth (out of ten inventoried) most significant waterways with respect to wildlife habitat values. The plan finds the greatest wildlife habitat function is as a travel corridor and that the water and adjacent riparian vegetation provide habitat for waterfowl, heron, cormorants and kingfishers.

The applicant submitted a Biological Assessment prepared by Ellis Ecological Services and Flowing Solutions, LLC assessing impacts of the proposed in-water expansion (Exhibit 23). The report concludes the project is expected to have "no effect" on listed plant or wildlife species or their habitat but that the project is "likely to adversely affect" the following salmonids that are likely to occur in the vicinity of the proposed action: Lower Columbia River Coho Salmon, Lower Columbia River Chinook Salmon, Upper Willamette River Chinook Salmon, Lower Columbia River Steelhead Trout and Upper Willamette River Steelhead Trout. This determination was based on short-term acoustic disturbances caused by pike driving, temporary disturbances to water quality and benthic food organisms during construction and long-term shading effects caused by the new expansion.

The report's executive summary concludes that no significant long term effects to essential fish habitat are anticipated with proper implementation of appropriate conservation measures. Conservation measures recommend in-water work to occur July 1 to October, control of turbidity and contaminants, establishment of a spill prevention and control plan, use of a vibratory hammer for pile driving, cutting old piles at the mud line, installation of anti-perching piling caps, use of encapsulated dock floats. The applicant has also proposed installing grating along the new docks to minimize shading.

Although new in-water development may have a detrimental impact on birds and aquatic species given the surface coverage and noise, the existing moorage improvements within the SPA is a mitigating factor reducing the habitat value of the expansion area. ~~As such, there is not a significant detrimental impact caused by the SPA in-water expansion.~~ The applicant has considered the design of the entire in-water development in the SPA, making adjustments where needed to minimize impacts to fish and wildlife such as replacing sections of existing dock with open grating to minimize light reduction in the shallows and proposing grading along the new dock. In addition, the in-water development is typically located in deep water (25-feet plus) further minimizing light reduction in the shallows.

Wetland areas identified on the National Wetlands Inventory maps are located along the western portion of the site, 1.2 acres of which would need to be filled to expand the boatyard west as envisioned within the SPA according various maps and plans (Exhibits 4, 11, 17, & 74). Although the applicant has mentioned wetland mitigation is possible, Staff has not seen details on the specific mitigation areas or fill volume proposed. Considering the evidence in the record, Staff finds that certain aspects of the SPA such as the boatyard expansion, new auto parking areas could have a detrimental impact on fish and wildlife using the area. Although long-term impacts to fish habitat are not anticipated, short term impacts to fish and fish habitat are likely to be caused by the construction of the in-water expansion area. It appears these temporary impacts can be reduced through mitigating techniques, but cannot be eliminated.

6.1.5.3.2 (Land Environmental)

***Development in Wetland* - Development which does not impact wetlands.**

Staff: Portions of the SPA development are located immediately adjacent to and within wetland areas labeled PEMC (Palustrine Emergent Seasonally Flooded) or PSSC (Palustrine Scrub Shrub Seasonally Flooded) on the National Wetland's Inventory. In 1993, the previous owner's request to establish 50 floating homes was denied and reduced to 40 by a Hearing's Officer who felt 50 dwellings on this site would adversely impact wetlands. Page 19 of the decision noted "*In this case, the hearing's officer finds that the parking needs associated with 50 houseboats, along with the cumulative affects of the other proposed uses and its associated parking, will unnecessarily endanger portions of the wetland and riparian fringe. In short, the applicant is attempting to put too much development in too small of a place, and the resource area is being unnecessarily crowded by parking in order to achieve such density. The hearings officer notes that one way to alleviate such an over crowding is to grant a larger variance for the required parking standards. Although some variation could be warranted under the circumstances, a variance of the magnitude requested by the applicant is not appropriate as noted below. The better solution, in view of all the evidence in the record, is to reduce both the number of houseboats and the number of required parking spaces, in an effort to better protect more fragile and important resource areas from intrusion by roads and parking.*" A copy of this decision is presented as Exhibit 24.

The current request for 76 floating homes, in combination with the proposal to fill 1.2-acres of wetlands in the boatyard expansion area leads staff to believe that development under a SPA would likely impact wetlands. The applicant has submitted a generalized wetland mitigation plan on the last page in Exhibit 17 noting an "open water wetland replacement area" which appears to match the existing wetland footprint in aerial photos of the site. Exhibit 17 contains

a mitigation plan plant list but provides no information as to where mitigation planting will occur. Staff suspects the applicant will also need to place a large volume of fill near wetland areas to meet current parking standards as previously discussed. The applicant has not demonstrated the proposed development can fit on the property and meet all applicable standards without impacting wetland areas.

At this point, not enough information has been provided to demonstrate that the SPA designation is appropriate. The applicant should demonstrate the increased residential density will not impact wetland areas and that the mitigation proposed is feasible, appropriate and adequate when considering measures to offset impacts created within the SPA.

Traffic Increase **- Development which minimizes increases in traffic on moorage access roads, on railroad crossings, and onto Highway 30.**

Parking **- Development which minimizes the amount of parking area necessary.**

Staff: Traffic from the site will access Highway 30 on Old Lower Rocky Pointe Road, which is a county road. The addition of 36 new dwellings will increase traffic on the local moorage access road, will increase traffic crossing the railroad west of the site and will increase traffic onto Highway 30. The applicant has explained that traffic will actually be reduced with the SPA master plan which removes all 22 live-a-board boats from the property and removes 16 boat slips to help make room for the new dwellings. Staff has not found evidence of approval for the use of any boats to be used as dwellings and therefore the removal of unpermitted live aboard boats can not be used as mitigation to meet this standard. Nothing has been provided to the record addressing how the owner would change his operational practices to reduce traffic.

The removal of 16 recreational boat slips will not offset the increase in transportation demand caused by the addition of 36 new homes. Considering the evidence in the record, Staff finds that development under a SPA designation would increase traffic on local roads and over the rail crossing. The applicant has not provided tangible evidence as to how that increase would be offset to minimize the impact.

No right-of-way dedications are being required by the County Transportation Planning group at this time, although a traffic impact study will be required in the future if the Goal Exception application is approved to determine if traffic mitigation is needed as a result of this proposal (Exhibit 33). A traffic impact study has not yet been submitted by the applicant.

Ground Water Quality **- Development which minimizes impacts to ground water quality.**

Applicant (Supplied by Andrew Jansky, PE., Flowing Solutions):

The proposed expansion to the work yard includes the addition of approximately 17,800 sf of new impervious area (0.41Ac). In order to estimate the increased runoff due to the proposed development the 10-yr, 24-hr storm was analyzed using the Santa Barbara Unit Hydrograph for the existing site conditions as well as the proposed expansion. The results of this analysis show an increased flow of 0.15cfs and an increased volume of approximately 1900cf. The preliminary grading plan shows adequate room for treatment and storage of this volume of water.

As the soil type and high groundwater make infiltration of the runoff impractical, a treatment chain of swales and mechanical systems will be used to treat the runoff with a pond for storage. The overflow from this pond will be discharged into the existing pond on the site. Discharge from the pond and swales can be controlled through the use of an orifice or weir to restrict the flow rates to existing rates.

While these calculations are preliminary and final design of the site has not been completed, it is clear that it is feasible to maintain runoff rates to those seen under the existing conditions.

The existing areas site includes repaving and adding additional parking spaces. These spaces generally exist and include gravel or grass overflow parking zones. The additional areas are generally small, however one section includes 14,000 sf of parking. The stormwater for the smaller areas can be treated by shed draining to a small grass diffusion strip. The larger area will required the use of pervious pavement or a collection and treatment system using bio-swales. Sufficient area exists adjacent to the proposed parking area to accommodate this type of stormwater treatment.

Staff: Comprehensive Plan Policy 16G (Natural Resources – Water Resource and Wetlands) states it is the county's policy to protect a number of water resources, including groundwater, from a public safety standpoint. The Comprehensive Plan Policies provide general policy decision making context when evaluating more specific Rural Area Plan Policy criteria, such as Policy 15 in this case.

The safety of shallow groundwater quality for public consumption could most easily be impacted by inadequate sewer service and improper storm water runoff treatment. Sewer service is provided throughout the SPA in association with the dwellings, boatyard and marina office. Potable water will be provided throughout the SPA for permanent residents, recreational guests using the boathouses and boat slips, general public purchasing fuel, washing clothes, etc. and boatyard workers.

The sewer system is permitted and routinely inspected by DEQ and, and at the request of both DEQ and the county, has been found by an engineer to have adequate capacity to safely treat all existing and proposed development within the SPA. Grass diversion strips, a series of drainage swales, mechanical treatment and a storm water storage pond is proposed by the engineer to treat runoff from parking areas and the new and expanded boat maintenance yard. The applicant indicated groundwater is typically found 18 feet deep and the well is 146 feet deep suggesting to staff that public drinking water is likely being withdrawn from fairly deep in the local aquifer less susceptible to shallow contamination. Although staff can offer no evidence to this effect, Staff suspects static groundwater may actually be less than 18-feet deep at times considering the low property elevation and proximity to wetland areas and the channel.

Land Wildlife **- Development which minimizes impacts to land wildlife.**

Staff: The wildlife population around the marina includes geese, ducks, otter, beaver, nutria, muskrats, turtles, frogs, and many birds. As previously stated, the natural portions of the site are predominately outside the SPA in an attempt to minimize wildlife impacts. It is unclear whether the boatyard expansion would have impacts to wildlife. Oregon Department of Fish and Wildlife Staff have been invited to comment on the proposal but have not yet provided feedback. Notice of the public hearing was sent to ODFW staff.

The Biological Assessment prepared by Ellis Ecological Services & Flowing Solutions, LLC (Exhibit 23) focuses only on the in-water work proposed and does not address the boatyard expansion. The report states on page iii that "*No listed plant and wildlife species are known to occur at the Project site. The proposed Project is expected to have "no effect" on listed plant or wildlife species or their habitat.*" Rural Area Plan Policy 15 does not limit protection to only listed wildlife species.

Expanding the boatyard north is not an option due to a property line, east due to the riparian area buffer and channel and south due to existing development. Trees will not need to be removed to serve this expansion, although a few shrubs will be. The SPA layout, which corresponds to the outside boundaries of the exception areas, preserves a continuous natural area running along the northern third of the property on the west side. Approximately 30% of the site will be left in the natural state preserving a protected linear wildlife corridor allowing movement through the area west of the SPA.

As previously mentioned, the applicant has not explained how the houseboat auto parking (and access thereto) will be elevated at least 2-feet above the 100-year floodplain to meet current parking codes. After reviewing the FEMA Flood Insurance Rate Map of the property, Staff believes a large amount of fill may be required to create an elevated parking area. The applicant has not provided details on the design or location of the required parking area and therefore, Staff does not have the information necessary to adequately evaluate impacts to wildlife.

Necessary Utilities - **Development which requires fewer utilities to serve proposed uses.**

Staff: Comprehensive Plan Policy 37 (Utilities) defines necessary utilities as sewer, water, storm water drainage, energy and communications systems. The applicant's site plans in Exhibits 4, 16 & 77 show the location of each of these utilities which run the length of the SPA. It appears feasible that these existing utilities can simply be extended south of the upstream dock to serve the in-water expansion area and extended west from the boatyard into the boatyard expansion area. No new utilities will be required to serve the proposed uses with the SPA.

The well's capacity is currently under the level requiring a permitted water right by the State Department of Water Resources. Although the applicant has just begun the permitting process to establish a water right commensurate with the proposed demand, a department staff member indicated to staff over the phone that it is more likely than not that the permit will be approved. This is because the existing well provides the majority of the yield needed to serve the SPA (post expansion) and considering Multnomah Channel is not designated a groundwater limited area. The state's water right permitting process is estimated to take 9-12 months. Notice of the public hearing was sent to Department of Water Resources staff.

Need for Restroom Facilities - **Development which minimizes the need for additional communal restroom facilities to serve the proposed uses.**

Staff: All existing dwellings within the SPA have private restroom facilities to minimize the need for additional communal restroom facilities on the site. Public restrooms available to serve the recreational users of the site and employees are found on the docks and in the boat

repair yard. All new dwellings will have private restroom facilities. The applicant is contemplating a floating community meeting room within the expansion area and has not indicated whether that building would contain a restroom. A communal restroom in this building would be reasonable considering it would be a place for community members to congregate and recreate. Without a communal restroom in the building, some tenants using the meeting room would need to walk over ½ a mile to the nearest public restroom, assuming their home was one located at the opposite end of the site.

Floodplain Development **- Development which minimizes placement of permanent structures and uses in the floodplain.**

Staff: This criterion relates to Comprehensive Plan Policy 14 (Development Limitations), which directs development outside the 100-year floodplain when possible. Ninety-five percent of the subject property appears to be mapped within the 100-year floodplain. Areas outside the floodplain are small pockets along the west side of the property not suitable for development considering setback requirements of the zone. Therefore, the SPA must be located in the floodplain.

It is staffs view that this criterion applies to a permanent structure affixed to the ground and that the majority of new development within the SPA will be floating structures and gangways designed to rise and fall with floods. This ensures development is always located above flood waters meeting the intent of Policy 14. Staff believes the SPA minimizes the placement of permanent structures inside the floodplain.

Accessory Structures **- Development which minimizes the need for accessory on-land structures to serve proposed uses.**

Staff: The applicant has requested the SPA designation in order to have the ability to depart from the Community Service Use requirement in county code limiting houseboat density to a maximum of one floating dwelling per 50 feet of waterfront frontage (MCC 34.6755). The Rocky Pointe Marina serves a number of uses in addition to the 40 residential floating homes including marine related recreational support and commercial activities associated with fuel sales and boat repair. Although the SPA covers the entire operation, the relevance of this criterion should be viewed solely with respect to minimizing the need for on-land residential accessory structures.

Land structures used to support the residential use of the property include a well house, filter house, sewage treatment plant, three recycling/garbage collection structures, and a mail center. These structures are limited in size and necessary to support the 40 existing floating homes. The applicant has not indicated any new residential accessory structures are proposed on land to support the 36 additional floating structures. The remaining land structures are primarily congregated towards the northern property line and used in conjunction with the boat yard and therefore are not relevant (36' x 48' boat repair building, 24' x 50' portable shelter, utility shed, two 8' x 40' conex containers and a 20' x 60' portable shelter). All buildings on the property are illustrated on the applicants four existing site plans copied from associated case T3-06-005 which show the four sections of the operation (Exhibit 77).

6.1.5.3.3 Aesthetic

Vegetation on Land - **Development which minimizes the loss of land vegetation.**

Staff: This criterion needs to only be considered within the expansion areas since the existing land development has been in place for decades. The boatyard expansion area can be reviewed under existing county code and as such, there is no need to consider it as part of the SPA criteria. No trees will be removed to establish the emergency gangway ramp to the southern dock expansion area. Without details explaining where and how the residential parking area will be established, Staff is unable to find the SPA minimizes loss of vegetation.

Visibility of Shore - **Development which minimizes changes to natural shoreline features.**

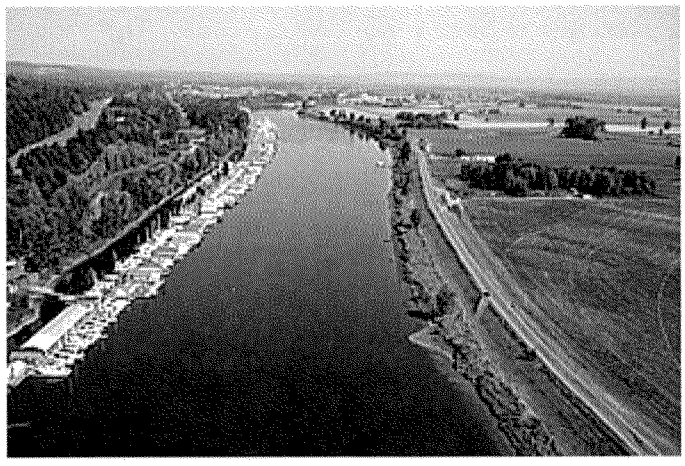
Staff: Staff is not aware of any changes to the natural shoreline features that have occurred in the past. No changes are proposed. A vegetative buffer 60-90 feet wide between the upland operation and the channel has been established according to aerial photo measurements. Gangway ramps to the in-water development rise above the shoreline.

Massing and Scale - **Development which has a human scale or architectural quality to it.**

Staff: This standard is met primarily through the separation of more intense commercial boat repair use from the more human scale, lower intensity residential uses on the property. The boat repair use is clustered towards the northern portion of the site adjacent to the property line, while the dwellings are located primarily on the outside of the three docks facing the channel. Homes are proposed on the outside of the proposed dock expansion as well. Parking in support of the existing homes is provided next to the channel clustered around the three existing gangway ramps helping to further separate the residential uses on the property from other uses as much as possible.

Diversity/Rural character - **Development which maintains the existing diversity and rural character of Multnomah Channel.**

Staff: The rural character of this channel reach is best described as undeveloped natural areas on the east bank, and in-water marina/moorage on the west bank. The proposal maintains the existing character of floating dwellings and boat slips defining the west bank. Moorages are a dominant feature along the channel. They are a part of its character and provide diversity in terms of form of development. The in-water footprint will follow the natural flowline of adjacent marinas.



Lighting - **Development which minimizes night lighting of uses.**

Staff: Although lighting within the SPA is necessary for safety, it has been designed and sited to minimize impact to neighboring areas according to the owner. Within the channel, only the gangway ramps are illuminated using low wattage lights placed at ground level. For security reasons, the parking area serving the docks must be illuminated at night. Six to Seven floodlights roughly 20 feet tall are directed downward within the parking area. These floodlights are below tree canopy level helping screen the lights and reduce light pollution. Fences and gates are utilized on the property to increase security, especially in the boat yard area, while reducing the need for security lighting.

Vegetation/landscape on Water - **Development which minimizes its visibility from the Multnomah Channel waterway.**

Staff: The landscaped buffer along the length of the channel helps push upland improvements associated with the residential uses back from the water and provides visual screening. Upland development does not extend above the tree line and all in-water docks and piers are brownish red weathered steel or brown wood helping it blend into the surrounding landscape as much as possible.

Houseboats are a dominant feature along the channel as illustrated in the photo above. Filling the remaining gap between the moorage to the south and the southern extent of the Rocky Pointe Marina will not impact visibility in a meaningful way.

6.1.5.3.4 Safety

Contribution to Channel Traffic - **Development which minimizes Channel traffic.**

Staff: The in-water expansion area will not extend further out into the channel than surrounding development and therefore will not impede channel traffic. The SPA envisions adding 36 new residences and 65 new auto parking spaces which will not have an effect on channel traffic. To create the space needed to add the homes, 550-feet of dock will be constructed and 16 existing boat slips will be permanently removed. The removal of the boat slips will reduce channel traffic.

Residential Link - **Development with a permanent residence component which provides a human presence to both report emergencies and violations on Multnomah Channel.**

Staff: The SPA envisions 76 full time residents that can watch over the site and report emergencies and/or violations. The Rocky Pointe Marina also has a full time care-taker living on the middle dock at the center of the marina. Each tenant has been provided with the care-taker's cell phone number.

Fire Hazard - **Development which minimizes fire hazard.**
Emergency Services - **Development which minimizes the need for emergency services.**

Staff: The applicant has worked closely with the Scappoose Fire Department in the SPA design to reduce the potential for emergencies. Prominent signage will be posted at each

gangway entrance noting the dwelling numbers accessible from that gangway ramp. In addition to the numerous water stand pipes required around the site by the fire department; five portable 5-horsepower fire pumps are available for additional mobile fire fighting protection. One is located on each of the three docks and one on each of the two service boats. The owner has also decided to run three to four fire drill exercises per year and require each tenant to attend at least one drill a year.

6.1.5.3.5 Economic

Development which provides economic value to Multnomah County in the form of assessment value and reduced need for public services.

Staff: The expansion proposed within the SPA will provide temporary construction jobs and permanently increase the assessed value of the property. The owner is estimating a $100,000 increase in personal property tax to the county for the new homes proposed. The consolidated development pattern within this SPA will economize on centralized on-site public water and sewer system and no additional public services are necessary to serve the expansion. All public services exist currently.

The additional homes will place additional demand on public police, fire, school services. Michael Greisen, Scappoose Fire District, indicated his office will support the development application assuming the applicant demonstrates a number of fire codes can be met. This will require review of access road constraints by the Fire Chief, installation of no parking signs along the access road, installation of a fire protection standpipe system and installation of gangway walkway and slip number signage (Exhibit 41). The Scappoose Fire Chief agrees that it is feasible that the owner can meet all fire requirements and that nothing needs to be completed before building permits are issued. The applicant has provided the Fire Chief a survey of the access road as requested by the Chief. The applicant has requested that any conditions of approval be incorporated into the pending Conditional Use case that will proceed in the event this goal exception is approved. Staff agrees this request is reasonable and finds that it is feasible that necessary fire service can be provided given the applicant can satisfy fire district requests.

The Multnomah County Sheriff's Office confirmed the level of police service available to serve the proposed project is adequate (Exhibit 40). Paul Peterson, Scappoose School District Superintendent, has reviewed the proposal and provided a letter of support (Exhibit 37).

6.1.5.3.6 Recreation

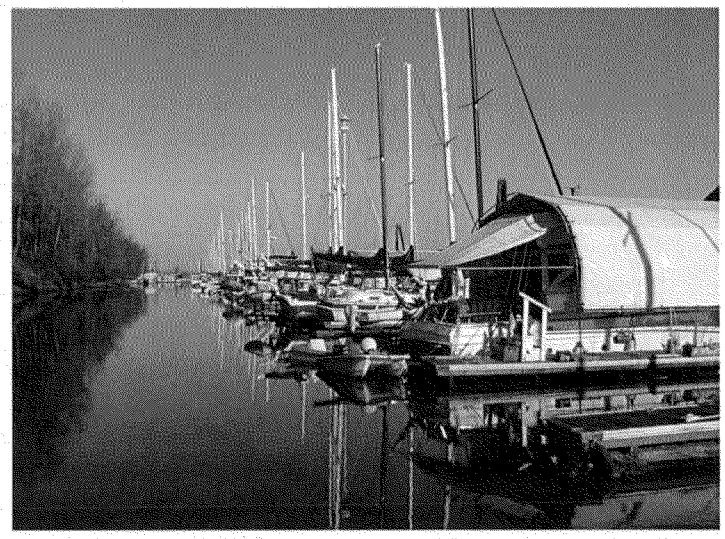
Contribution to Public Recreation **- Development which contributes to public recreation opportunities on Multnomah Channel.**

Staff: The SPA includes a public boat ramp which can be used by the general public and residents of the marina to access recreational opportunities on Multnomah Channel. Smaller boats, such as kayaks and canoes, can be launched directly off the dock adjacent to the houseboats.

Protect Public's Right to Access and Utilize Public Waterway **- Development which promotes and does not infringe on public's ability to access the public waterway**

(Multnomah Channel) for recreational purposes.

Staff: The marina offers a public boat ramp allowing public access to the channel through the site. The in-water development is set back from the channel allowing people to canoe and kayak along the bank rather than be blocked by the SPA houseboat development. The space provided between the docks and riverbank is illustrated in the photo below.



6.1.5.3.7 Cumulative Impacts

The cumulative impacts of the proposed development on the overall carrying capacity of Multnomah Channel shall be considered and minimized.
The criteria listed shall be weighed and balanced by the hearing body considering each Special Plan Area so as to determine the most appropriate intensity and type of development allowed within each of these areas.
In reviewing each Special Plan Area, Multnomah County shall consult with other relevant local, state, and federal agencies, including but not limited to the following agencies:

Division of State Lands
Oregon Department of Fish and Wildlife
Oregon Parks and Recreation Department
Oregon State Marine Board
U.S. Army Corps of Engineers
Metro Parks and Greenspaces

Staff: Notice of the project was mailed to every agency above and an opportunity to raise concerns provided. No concerns were provided by any of the agencies above. The expansion area is identified as being an area identified as suitable for houseboat uses in the Sauvie Island/Multnomah Channel Rural Area Plan. That process evaluated carrying capacity of the channel as a whole when setting limits on where houseboat expansions can occur.

6.1.6 MCC 37.0705(A)(3) The uses allowed by the proposed changes will:
(a) Not destabilize the land use pattern in the vicinity;

Applicant: The surrounding land uses are very stable with marinas upstream and downstream; and a railroad and state highway between the marina and upland properties that grade steeply up into heavily forested mountains. The proposed expansion is an in-fill on the water lease. Additional land will not be disturbed.

Staff: The land use pattern in the vicinity is defined by linear in-water marina/moorage development consisting of pilings, docks, ramps, slips and various one and two story floating structures. The urban style density and abnormally linear arrangement of this development visually dominates the land use pattern along this reach of the channel. Although large farm tracts are found to the east and large forest tracts to the west, the vicinity is defined in this staff report as the developed reach of Multnomah Channel 5,000 feet downstream and 1,000 feet upstream of the expansion area. Staff believes that considering the channel as the vicinity is appropriate considering how different the in-water urban style development is from surrounding sparsely developed rural upland properties.

The proposed expansion will fill a small gap in existing similar development along the channel's west bank. The expansion will result in one continuous line of in-water marina/moorage development over one mile long formed by the Happy Rock Moorage on the upstream side, Rocky Pointe in the middle and the McCuddy's Marina on the downstream side[8]. The expansion will physically align with, conform to the architectural appearance of and not destabilize the existing land use pattern in the vicinity. It should be noted that the expansion area is already designated as appropriate for houseboat development Policy ~~16~~ 26 (Houseboats) of the county's Comprehensive Plan.

(b) Not conflict with existing or planed uses on adjacent lands;

Applicant: The marina is isolated from any properties where there could be a conflict.

Staff: Staff is not aware of any planned uses on adjacent lands that would be relevant for this analysis. At the time of this writing, no active land use cases were pending on adjacent properties. Adjacent lands to the north and south are developed with the same type and relative scale of in-water development proposed. The proposal has been amended to accommodate waterway access concerns raised by the owner of Happy Rock Moorage on the upstream side. The most recent plan offers 50-foot separation between the new dock expansion and the Happy Rock Moorage to allow necessary waterway access to the slips on the bank side of Happy Rock's docks. In order to avoid conflict, establishing this 50-foot separation is a recommended condition of approval.

The proposed expansion will not extend further than adjacent development into the channel and therefore will not obstruct river traffic. The rail line and Highway 30 transportation corridors abut the west side of the property and Multnomah Channel to the east. The proposed expansion will not obstruct either the road or rail-line. Staff finds the expansion will not conflict with adjacent lands.

(c) That necessary public services are or will be available to serve allowed uses.

[8] This operation has been referred to in the past as "McCuddy's", "Big Oak Marina" and "McCuddy's Big Oak Marina".

Applicant: All utilities are currently in place.

Staff: Public services include drinking water, septic disposal, fire and police response and public school availability. The owner has indicated an on-site artesian well currently provides drinking water to the site and has applied for a water right expansion to serve the new dwellings from the Department of Water Resources (Exhibit 53, 38, & 60).

In September of 2008, the owner informed the Department of Environmental Quality (DEQ) of the request to add 36 floating homes with a 10,000 gallon per day on-site Davco wastewater septic treatment plant. On October 22nd, 2008, DEQ staff requested the owner retain an engineer to prepare an evaluation report confirming whether or not the existing system can handle the increased septic load. Stuart L Cato, PE, CWRE has confirmed that "*based on the existing flows and treatment levels it is our opinion that the proposed addition of 36 more floating homes will not overload the package* (sewage) *treatment plant with a permitted average monthly flow of 6,500 GPD.*"

Michael Greisen, Scappoose Fire District, indicated his office will support the development application assuming the applicant demonstrates a number of fire codes can be met. This will require review of access road constraints by the Fire Chief, installation of no parking signs along the access road, installation of a fire protection standpipe system and installation of gangway walkway and slip number signage (Exhibit 41). The Scappoose Fire Chief agrees that it is feasible that the owner can meet all fire requirements and that nothing needs to be completed before building permits are issued. The applicant has provided the Fire Chief a survey of the access road as requested by the Chief. The applicant has requested that any conditions of approval be incorporated into the pending Conditional Use case that will proceed in the event this goal exception is approved. Staff agrees this request is reasonable and finds it feasible that necessary fire service can be provided given the applicant can satisfy fire district requests.

The Multnomah County Sheriff's Office confirmed the level of police service available to serve the proposed project is adequate (Exhibit 40). Paul Peterson, Scappoose School District Superintendent, has reviewed the proposal and provided a letter of support for the proposal (Exhibit 37). Staff finds all necessary public services are or can be made available to serve the proposal. The applicant will need to provide authorization from the Oregon Department of Water Resources and the Department of Environmental Quality to expand the marina as part of the pending Conditional Use process.

6.1.7 MCC 37.0705(A)(4) Proof of change in a neighborhood or community or mistake in the planning or zoning for the property under consideration are additional relevant factors to be considered under this subsection.

Applicant: There are no errors or mistakes in planning. Multnomah County has clearly identified Rocky Pointe Marina in an area for floating homes as outlined in both the Sauvie Island Plan and the Multnomah County Comprehensive Plan Policy 26 which is part of the county's adopted and acknowledged comprehensive plan.

Staff: Staff concurs with the applicant. This plan revision request is based neither on neighborhood change nor on a zoning mistake. This reach of the channel has been used for non-resource based development for decades and the land zoned accordingly. As the applicant

points out, Comprehensive Plan Policy 26 (Houseboats) specifically calls out the Rocky Pointe Marina as suitable for houseboat development.

6.2 MCC 37.0705(B) Quasi-Judicial Zone Change. The burden of proof is upon the person initiating a zone change request. That burden shall be to persuade that:

6.2.1 MCC 37.0705(B)(1) Granting the request is in the public interest;

Applicant: The public benefits from a diversity of housing types; stewardship of the river; river access; and the provision of an efficient waste treatment system.

Staff: Staff has informed the applicant that the burden of proof lies with the applicant rather than staff. The request will increase housing availability and offer more diverse housing options opportunities in Multnomah County which benefits the public. Comprehensive Policy 24 (Housing Location) supports the location of new housing in areas where services can be provided most economically and efficiently. The extension of existing sewer and water service at the site will be more economical and efficient than the traditional rural development model of a separate on-site system serving each dwelling.

This proposal also aligns with Comprehensive Framework Plan Policy 20 (arrangement of land) encouraging a complementary blend of mixed uses to create a sense of neighborhood identity and stability. Consolidating residential development into one rural location adjacent to a highway also makes it quicker for emergency services to respond to a call. The new dwellings will be located adjacent to numerous recreational opportunities on the property, within the channel, within Forest Park to the southwest and Sauvie Island to the east. The proposal provides a number of benefits to the general public.

6.2.2 MCC 37.0705(B)(2) There is a public need for the requested change and that need will be best served by changing the classification of the property in question as compared with other available property;

Applicant: The site is committed to the proposed use for over fifty years. The exception is to allow additional houseboats and continued improvements to the existing sewer system. The area is developed as a marina and the location is designated by Multnomah County's Comprehensive Plan as appropriate for houseboats. The only location available for this type of exception is along the waterfront. This location is one of the few, if not the only, location were an expansion can occur between two existing marinas in an area that has been developed with docks in the past.

Staff: The applicant submitted additional narrative on March 4th, 2009 addressing public need. A copy is presented as Exhibit 21. In this narrative, the applicant explains the population of the Portland area is expected to increase substantially in the next 10 years and that floating homes have proven to be a favorable housing option and that a currently a need for floating home spaces exists. The applicant projects the new I-5 bridge could possibly displace as much as 100 floating homes increasing demand further in the future.

Staff is not confident a finding of public need can be made for the requested change in zoning to accommodate higher residential densities considering language in the County's Comprehensive Plan Policy 26 (Houseboats), which states:" *"Moorage sites are limited in the*

County, and demand for moorage space is high. Local moorages are all at or near capacity. However, demand for houseboat space should not be equated with need. Houseboats were not considered in Multnomah County's housing needs inventory, nor are they required to fulfill the County's housing obligation. Projected housing demand to the year 2000 can be met with the land already zoned for residential development. Therefore, houseboats may be considered a desired housing choice, but not a needed one." The proposed zone change does not appear to meet this standard.

6.2.3 MCC 37.0705(B)(3) The proposed action fully accords with the applicable elements of the Comprehensive Plan;

Applicant: The applicant submitted findings in support of each applicable element of Multnomah County's Comprehensive Plan; and

Staff: Applicable Comprehensive Plan and Rural Area Plan policies have been evaluated within this report where applicable to the criterion at hand.

6.2.4 MCC 37.0705(B)(4) Proof of change in a neighborhood or community or mistake in the planning or zoning for the property under consideration are additional relevant factors to be considered under this subsection. The existence of home occupations shall not be used as justification for a zone change.

Staff: This zone change request is based neither on neighborhood change nor on a zoning mistake. This reach of the channel has been used for marina based development for decades and the land zoned accordingly. The applicant is not using the existence of home occupations for justification.

7.0 SPECIAL PLAN AREA (MCC 34.5000-34.5010)

MCC 34.5000- Purposes

The general purposes of the Special Plan Area Subdistricts are to implement various provisions of the Comprehensive Plan, the Statewide Planning Goals and the land use control elements of Special Plan Area plans and of plans for neighborhoods and subcommunity vitalization; to aid in realizing opportunities to achieve community, social and economic stability and vigor; to institute desired patterns and improvement standards for land uses according to adopted specific-place plans; to facilitate public-private sector cooperation in the development of such areas; to establish more flexible and diversified standards and procedures; and to provide means to establish such interim land use controls as are deemed necessary, pending the preparation of local area comprehensive plan revisions or development strategies.

MCC 34.5005 - Area Affected

The provisions of a Special Plan Area subdistrict shall apply to specific land areas

according to their designations as subdistricts SPA-l, SPA-2, SPA-3, etc., on the Multnomah County Zoning Map.

MCC 34.5010 - Standards to Establish an SPA Subdistrict

(A) An amendment establishing an SPA subdistrict shall include the following:

7.1 **MCC 34.5010(A)(1) The designation of the subdistrict as SPA-l, SPA-2, SPA-3, etc., in the text and on the appropriate Sectional Zoning Map;**

Staff: Staff does not believe the proposed SPA is justified for the reasons outlined in this report. In the event the Planning Commission finds that the SPA designation is justified, Staff proposes the public hearing be continued until a later date so that Staff can draft appropriate SPA subdistrict zoning text using the standards provided in MCC 34.5010(A)(1) – (11).

8.0 PLANNING AND ZONING FOR EXCEPTION AREAS (OAR 660-004-0018)

8.1 **OAR 660-004-0018(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.**

Applicant: The applicant is proposing physically developed and irrevocably committed exceptions to Goal 11 and 14 that is intended to recognize existing marina development and sewer system.

Staff: The following rules apply to this goal exception request because it involves adoption of zoning provisions authorizing an increase in residential density. These rules relate to residential densities (i.e. Goal 14) rather than sewer densities (Goal 11). ~~The physically developed and irrevocably committed exception is intended to allow the continuation of urban level residential development at this site, as has occurred for decades. Exceptions are limited to Goals 11 and 14 as outlined in this report.~~

8.2 **OAR 660-004-0018(2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those:**

(a) That are the same as the existing land uses on the exception site;
(b) That meet the following requirements:

(A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal

requirements; and

(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and

(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;

(c) For which the uses, density, and public facilities and services are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if applicable, or

(d) That are industrial development uses, and accessory uses subordinate to the industrial development, in buildings of any size and type, provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.

Applicant: The zoning limits the uses, density and public facilities on the subject property and marina to those that are the same as the existing land uses on the exception site/marina pursuant to OAR 660-004-0018(2)(a).

Staff: This standard requires the new zoning resulting from a goal exception to specify a numeric lot size and limit uses, density and services to those that are the same as the existing land uses. With an approved exception in place, the existing Multiple Use Agriculture-20 (MUA-20) zone will be applied to the exception areas because the SPA zone change has not been justified. The MUA-20 zoning code already establishes a 20-acre minimum lot size and specifies the allowed range of uses in MCC 34.2800 – 34.2885, as required by this standard. Additionally, the approved exception would allow the owners to apply for expansion under the 1:50 density limitation codified in the current MUA-20 zone. Staff finds 2(a) is met as long as the expansion does not exceed the 1:50 land use density limitation in current county code[9].

~~Although the applicant has justified Exceptions to Statewide Planning Goals 11 and 14 for portions of the proposed exception areas, Staff believes the proposed SPA subdistrict is not justified for the reasons outline in this report. The applicant has not justified an exception is necessary for the boat yard expansion which can be reviewed under current code.~~

~~The Multiple Use Agriculture-20 (MUA-20) base zone with associated 20-acre minimum lot size will still apply to the exception areas. The uses listed in the MUA-20 zoning ordinance (MCC 34.2800 – 34.2885) apply. Because the SPA has not been justified, the maximum residential density shall be determined by the Community Service/Conditional Use Density standard of MCC 34.6755 apply capping the maximum density to one houseboat for each 50-feet of waterfront frontage.~~

~~The Hearings Officer has the authority to reduce density below the maximum allowed if it is determined development at the maximum density would place an undue burden on school, fire protection, water, police, road basic utility or any other applicable service (MCC 34.6755(A)). Additionally, a Hearing's Officer may reduce the approvable density below the 1:50 maximum~~

[9] The county's 1:50 density limitation was not derived from state law.

~~if development at the maximum density would endanger an ecologically fragile natural resource or scenic area (MCC 34.6755(B)).~~

~~Therefore, the Hearings Officer, rather than the Planning Commission, is the appropriate review authority to determine appropriate residential density at the Rocky Pointe Marina during the pending Conditional Use/Community Service Use review. The Planning Commission is the appropriate review body to determine whether or not the 1:50 residential density cap must be applied and, if not, what is the appropriate maximum density.~~

8.3 OAR 660-004-0018(3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved only under provisions for a reasons exception as outlined in section (4) of the rule and OAR 660-004-0020 through 660-004-0022.

Applicant: This rule is not applicable because the uses, density and public facilities and services meet section (2) of this rule.

Staff: This standard is not applicable. Provision 2(b) does not have to be met because the project qualifies under 2(a). ~~Section (2) of the rule has been met through application of the current MUA-20 zoning ordinance within the exception area. Section (3) does not apply.~~

8.4 OAR 660-004-0018(4) "Reasons" Exceptions:

(a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception;

(b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required;

(c) When a local government includes land within an unincorporated community for which an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, which ever is more stringent.

Applicant: No "reasons" exception is being proposed, and therefore, this rule is not applicable.

Staff: Not applicable. Provision 2(c) does not have to be met because the project qualifies under 2(a). ~~Staff concurs.~~

9.0 CONCLUSION

Applicant: The marina has existed at this site for almost fifty years. Multnomah County's Comprehensive Plan acknowledges that this area is appropriate for Marinas. The proposed development is infill development between an existing marina upstream and Rocky Pointe Marina. The sewer system is permitted and monitored by the DEQ. The sewer system protects

the river's ecology from human waste and provides a practical and environmentally sound method to retrieve and process the waste. The conditional use process, design review, and greenway review ensured that all proposed and existing development complies with Multnomah County's rules and regulations.

Staff: Staff recommends the Planning Commission forward a recommendation of approval to the Board of County Commissioners for the Exception request to Statewide Planning Goal 14 and Goal 11, for all proposed areas illustrated in Exhibits 1, 2 & 3 other than the westerly boatyard expansion and areas of existing commercial development not required to support the residential uses. Expansion of the boatyard does not require an exception because the use is not residential (Goal 14) nor is it dependant upon sewer service (Goal 11). The scope of the commercial activities does not exceed that allowed in the Oregon Administrative Rule and therefore a goal exception is not necessary to continue with these uses. Staff recommends the Planning Commission direct the applicant to revise the goal exception plans accordingly prior to the Board public hearing.

Staff also recommends the Planning Commission deny the request to exceed the request to establish a Special Plan Area within the Exception Areas allowing the one houseboat per 50 feet of waterfront frontage density cap of MCC 34.6755 to be exceeded. The applicant has not demonstrated the SPA criteria within Rural Area Plan Policy 15 [particularly with respect to impacts on traffic, natural resources and wildlife] or the zone change criteria of MCC 37.0705(B)(2) have been met. Staff respectfully requests that the Planning Commission clarify for the record that as a policy of general applicability - the residential density limitations of MCC 34.6755 apply to any request to establish a Special Plan Area.

10.0 CASE TIME LINE

Application submitted: 7/03/08
Application deemed incomplete by staff: 8/1/08
Application deemed complete by the applicant: 12/30/08
Notice sent to the Department of Land Conservation and Development: 2/19/09
Newspaper notice of Planning Commission hearing published: 3/11/09
Direct notice of Planning Commission hearing mailed: 3/17/09

11.0 LIST OF EXHIBITS

MOST RELEVANT EXHIBITS ARE SHADED
SUPERSEDED EXHIBITS ARE ITALICIZED

Exhibit #	*Description*	*Date Submitted (by applicant or staff)*
1	**Site Plan** – Irrevocably Committed Goal 11 Exception Areas (1 page)	11/10/08
2	**Site Plan** – Irrevocably Committed Goal 14 Exception Areas (1 page)	11/10/08

3	**Site Plan** – Physically Developed Goal 11 and Goal 14 Exception Areas (1 page)	11/10/08
4	**Site Plan** – Existing Site Development Plan (1 page)	11/10/08
5	**Site Plan** – Property Vicinity Plan (1 page)	11/10/08
6	**Site Plan** – Vicinity Plan using 2004 Aerial Photo (1 page)	3/18/09
7	**Zoning Map** – Base Zoning Map of Township 3 North, Range 1 West (Willamette Meridian), Section 36A & D (1 page)	3/18/09
8	**Zoning Map** – GIS Produced Base Zoning Map of surrounding area (1 page)	3/18/09
9	**Tax Assessment Map** – Tax Assessment Map of Township 3 North, Range 1 West (Willamette Meridian), Section 36A & D (1 page)	3/18/09
10	**Comprehensive Plan Map** – Current Comprehensive Plan Map Showing Policy 26 Moorage Boundaries (1 page)	3/18/09
11	**Aerial Photo** – 2004 Aerial Photo of Downstream Portion of the Rocky Pointe Marina (1 page)	3/18/09
12	**Aerial Photo** – 2004 Aerial Photo of Middle Portion of the Rocky Pointe Marina (1 page)	3/18/09
13	**Aerial Photo** – 2004 Aerial Photo of Upstream Portion of the Rocky Pointe Marina (1 page)	3/18/09
14	**Aerial Photo** - 2004 Aerial Photo Showing 100-Year Floodplain Boundaries (1 page)	3/18/09
15	**FIRM MAP** – FEMA Flood Insurance Rate Map (Community-Panel Number 410179 0030 B, revised March 18, 1986) Showing 100-Year Floodplain Boundaries (1 page)	3/18/09
16	**Site Plans** – Various Plans Showing Site Improvements Relating to Sewer Improvements, Roadway Locations, and Power Easements (3 pages)	11/10/08
17	**Site Plans** – Various Plans Showing Wetland Location, Proposed Fill Location, Typical Fill Cross-Section Views and a Wetland Mitigation Plan Within the Proposed Boat Yard Expansion Area (8 pages)	2/10/09
18	**Narrative** – Applicant's Narrative Addressing Goal Exception and SPA Criteria (40 pages)	10/15/08
19	**Narrative** – Stormwater Narrative Submitted by Andrew Jansky, PE. Flowing Solutions, LLC (1 page)	9/30/08
20	***Superseded Narrative*** *- Applicant's Narrative Addressing Goal Exception and SPA Criteria (47 pages)*	*9/30/08*

21	**Narrative** – Applicant's Narrative Addressing Density, Public Need and Parking Issues (4 pages)	3/5/09
22	**Narrative** – Narrative Describing Aerobic Sewage Treatment Process (3 pages)	7/3/08
23	**Narrative** – Biological Assessment for the Rocky Pointe Marina Expansion Prepared by Ellis Ecological Services and Flowing Solutions, LLC (55 pages)	2/10/09
24	**Decision** – Hearing's Officer Decision CS 1-93, WRG 1-93, HV 1-93, CU 7-93 issued July 30, 1993 for the Rocky Pointe Marina (32 pages)	3/18/09
25	**Decision** – Staff Administrative Decision for final Design Review Plan, Grading and Erosion Control Permit and Floodplain Development Permit (DR 28-93, HD 33-93 & FD 6-93), issued January 24, 1994 for the Rocky Pointe Marina. Copies of approved site plans included (21 pages)	3/18/09
26	***Superseded Narrative*** *- Applicant's Narrative Addressing Goal Exception and SPA Criteria (40 pages)*	*7/3/08*
27	***Superseded Plans*** *– Applicant's Goal Exception Plan, Existing Development Plan and Sewer Improvement Plan (3 pages)*	*7/3/08*
28	***Superseded Plans*** *– Applicant's Vicinity Map, Goal Exception Plan, Existing Development Plan, Road Access, Sewer Improvement and Utility Plan (7 pages)*	*9/30/08*
29	**Narrative** – Residential Density Analysis prepared by Steve C. Morasch, Schwabe, Williamson & Wyatt (4 pages)	11/14/08
30	**Narrative** – Residential Density Analysis prepared by Stan and Jen Tonneson (1 page)	2/9/09
31	**Narrative** – Residential Density Spreadsheet prepared by Stan Tonneson (1 page)	2/11/09
32	**Comment** – Comments Submitted by Ross Kevlin, Oregon Department of Transportation (1 page)	7/28/08
33	**Comment** – Comments Provided by Ken Born, Multnomah County Transportation Planner (3 pages)	9/10/08
34	**Comment** – 11/16/07 Comments Provided by Charles R. Gilbert, Oregon Department of Transportation Rail Crossing Compliance Specialist (7 pages)	7/03/08
35	**Comment** – Copy of 9/7/06 Fax from Lyle Christensen, State of Oregon Department of Environmental Quality (1 page)	7/03/08
36	**Comment** – Copy of 10/22/08 email from Garry L. Sage, EIT, State of Oregon Department of Environmental Quality (1 page)	10/27/08

37	**Comment** – Comments provided by Paul Peterson, Scappoose School District Superintendent (1 page)	7/03/08
38	**Comment** – Copy of 8/14/08 email from Darrell Hedin, State of Oregon Department of Water Resources District 18 and Certification of Water Service Form Completed by the Land Owner For the "Artesian Well" (4 pages)	8/14/08
39	**Comment** – Land Owner Responses to Concerns Raised 1/31/09 by Estella (Ginger) Curtis of Happy Rock Moorage (3 pages)	2/2/09
40	**Comment** – Police Services Review Form filled out by Bernie Gusto, Multnomah County Sheriff's Office on October 4, 2005 (1 page)	7/03/08
41	**Comment** – Fire District Access Review Form, Fire Flow Requirement Form, 2/16/07 letter, 10/24/07 email, 2/05/09 email and 2/6/09 email from Mike (9 pages)	7/03/08, 7/03/08, 2/16/07, 10/24/07, 2/05/09 & 2/6/09, respectively
42	**Permit** – Department of State Lands Removal/Fill Permit 2004-00812 for the Rocky Pointe Marina issued February 18, 2009 (4 pages)	2/18/09
43	***Superseded Permit** – Department of State Lands Removal/Fill Permit 2004-00812 for the Rocky Pointe Marina issued November 28, 2008 (5 pages)*	*11/28/08*
44	***Superseded Permit** – Department of State Lands Removal/Fill Permit 2004-00812 for the Rocky Pointe Marina issued December 21, 2007 (4 pages)*	*7/03/08*
45	**Comment** – Comment Letter from Tami Hubert, State of Oregon Department of State Lands Property Manager (1 page)	7/03/08
46	**Comment** – Email from Michael V. McCabe, Oregon Department of State Lands, Explaining Why DSL Revised Permit 2004-00801 Two Times (2 pages)	2/17/09
47	**Narrative** – Sewage Treatment Capacity Report Prepared December, 2008 by Stuart L Cato PE/WRE, Slca Consulting Civil Engineers & 1/2/09 Letter (same author) Providing Additional Information on Showers, Liveaboard Boats and Evaporation Sewage Pond (15 pages)	1/15/09
48	**Certification** – Oregon State marine Board 'Clean Marina' Certification for the Rocky Pointe Marina (1 page)	10/13/08
49	**Letter** – 8/29/06 Letter from Doug White, Department of Land Conservation and Development, Addressing Goal Exception Need to Expand Moorages (2 pages)	3/18/09
50	**Deeds/Easements** – Copies of Historic Deeds and Easements Involving All or Portions Of the Subject Property (21 pages)	8/15/08

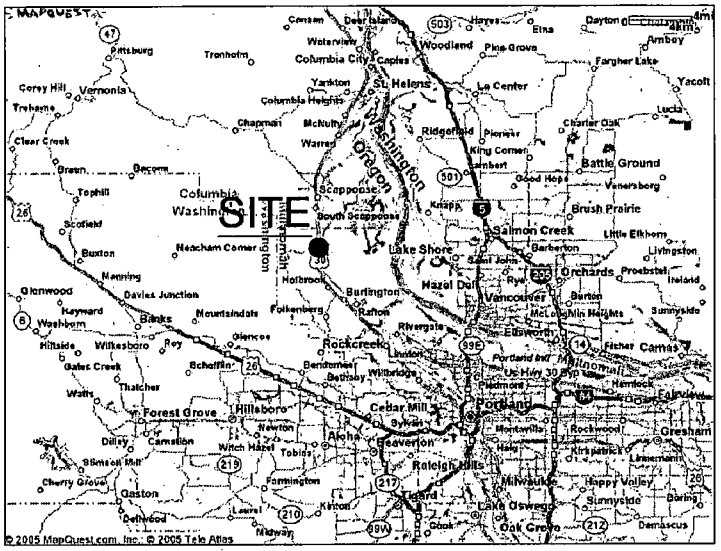
51	**Application Authorization** – General Application Form – Case T4-08-001 (1 page)	7/03/08
52	**Site Plan** – Site Plan Showing Two Possible Locations For Floating Community Room Within Proposed Dock Expansion Area (1 page)	1/20/09
53	**Land Use Compatibility Statement** – Land Use Compatibility Statement Prepared 1.21.09 For the State of Oregon Water Resources Department by Adam Barber, Multnomah County Senior Planner (3 pages)	1/21/09
54	**Notice** – DLCD Notice of Proposed Amendment mailed to DLCD 2/19/09 [7 pages. The attached application materials sent with the DLCD notice are not included in Exhibit 54 to minimize un-necessary duplication within the record. These materials (i.e. site plans & narrative) have previously been introduced into the record above. **The original DLCD notice, with all attachments, is contained in the permanent case file record and available for review**]	2/19/09
55	**Letter** – Letter Deeming Case T4-08-001 Incomplete on August 1, 2008 (9 pages)	8/1/08
56	**Letter** – Acknowledgement Letter Asking Whether the Applicant Agrees or Refuses to Provide The Additional Information Within 180-Days (1 page)	8/1/08
57	**Letter** – Applicant's Acknowledgement to Provide the Additional Information Within 180-Days (1 page)	8/7/08
58	**Letter** – Owner's Acknowledgement to Provide the Additional Information Within 180-Days (1 page)	8/12/08
59	**Letter** – Letter to Applicant Asking For Further Justification On Why the 1:50 Density Ratio Can Be Exceeded Through the Special Plan Area Process (2 pages)	9/29/08
60	**Email** – Email to Owner Asking For Additional Information Regarding Water and Sewer Permits (1 page)	12/9/08
61	**Email** – Email From Applicant Deeming Case Complete on December 30th, 2008	12/30/08
62	**Letter** – Letter To Michael Greisen, Scappoose Fire Chief, Asking For Clarification on Fire District Requirements (1 page)	12/31/08
63	**Email** – Email from Stan Tonneson, Property Owner, Clarifying Historic and Current Use of Portions of the Property Used for Recreation (1 page)	1/15/09
64	**Letter** – Letter Offering METRO's Staff An Opportunity to Comment On The Proposal (1 page)	1/28/09
65	**Letter** – Letter Offering U.S. Army Corps of Engineer's Staff An Opportunity to Comment On The Proposal (1 page)	1/28/09

66	**Letter** – Letter Offering Oregon Department of Fish and Wildlife's Staff An Opportunity to Comment On The Proposal (1 page)	1/28/09
67	**Letter** – Letter Offering the Oregon Department of State Land's Staff An Opportunity to Comment On The Proposal (1 page)	1/28/09
68	**Letter** – Letter Offering the Oregon Parks and Recreation's Staff An Opportunity to Comment On The Proposal (1 page)	1/28/09
69	**Letter** – Letter Offering the Oregon State Marine Board's Staff An Opportunity to Comment On The Proposal (1 page)	1/28/09
70	**Hearing Notice** – Public Notice of April 6th Planning Commission Public Hearing Mailed 3/17/09 (2 pages. **Mailing List Provided in the Permanent Record)**	3/17/09
71	**Meeting Notes** – Copy of 11/20/07 Pre-Application Meeting Notes PA-07-013 (7-pages)	3/18/09
72	**Letter** – Letter from Adam Barber, case planner to Multnomah County Planning Commission outlining Goal Exception/Special Plan Area/Zone Change Criteria (14 pages)	3/10/09
73	**Email** – Email From Owner Authorizing Staff to Amend Notation on Submitted Goal Exception Plan Clarifying Requested Goal Exception Areas (1 page)	1/22/09
74	**Map** – National Wetland Inventory Map of Property and Surrounding Areas (1:24,000 Scale – Sauvie Island, Oreg – Wash. 1989) – 1 page	3/18/09
75	**Guidebook** – Oregon Clean Marina Guidebook Prepared By the Oregon State Marine Board, August 2005 (192 pages – **Copy Contained in Permanent Case File)**	2/10/09
76	**Phone Note** – Adam Barber, case planner's, notes from phone conversation with Cary Goodman, ODOT Rail, confirming the rail crossing near the site entrance is already designated a public rail crossing and that the State of Oregon owns the right-of-way on either side of the rail line running along the west boundary of the site (1 page)	3/18/09
77	**Plans** – Plans Showing Current Development Patterns Across the Site (4 pages)	7/03/08
78	**Marketing Pamphlet** – Copy of Tri-Fold Marketing Pamphlet for the Rocky Pointe Marina (2 pages)	3/18/09

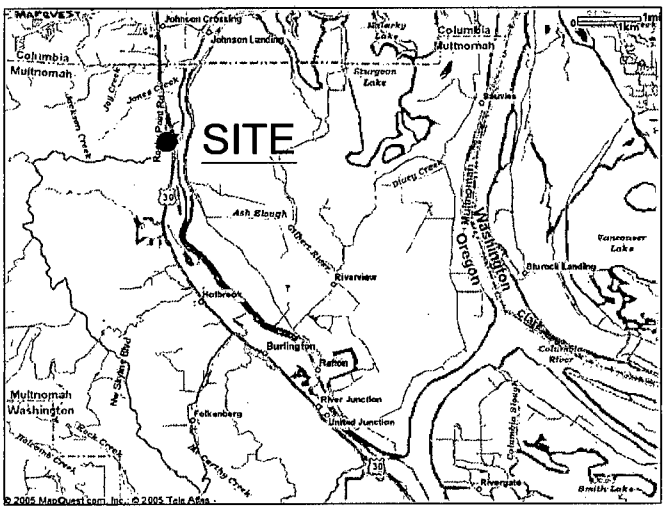
OVERSIZED EXHIBITS

OS-1	***Superseded Plans*** *- 11 X 17" Scaled Site Plans submitted 9/30/08*	*9/30/08*

OS-2	***Superseded Plans** - 11 X 17" Scaled Site Plans submitted 10/10/08*	*10/10/08*



LOCATOR MAP

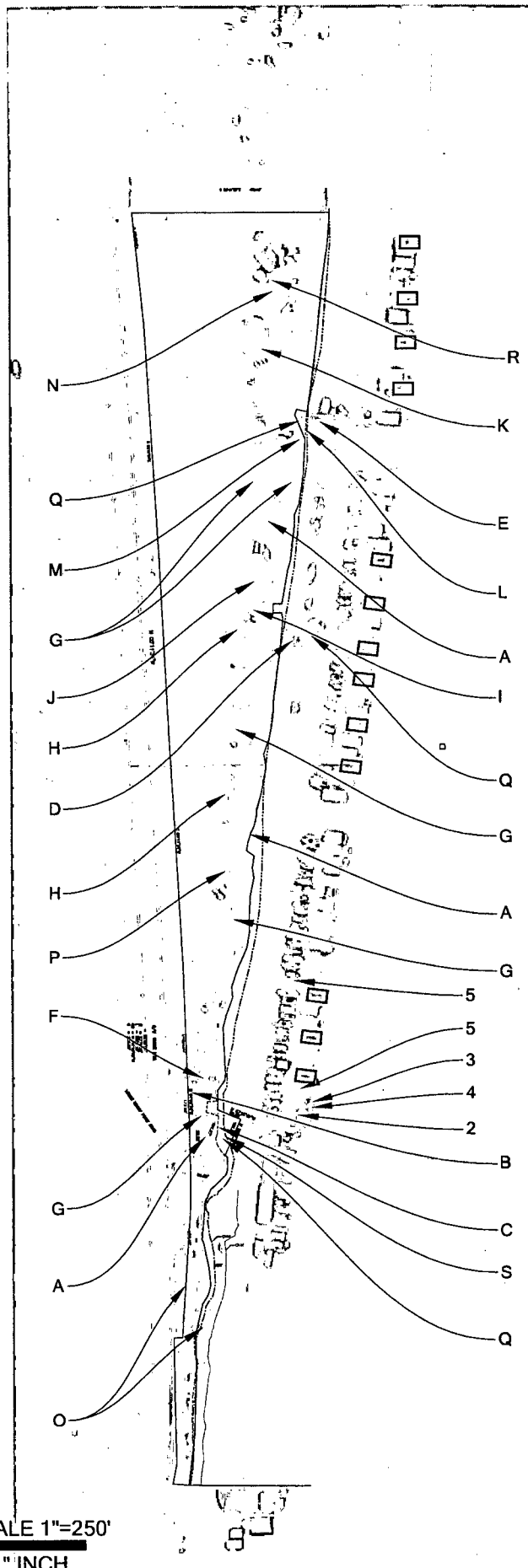


VICINITY MAP

Exhibit
B

OREGON STATE GOAL EXCEPTIONS

Flowing solutions Flowing Solutions 3305 SW 87th Avenue Portland, OR 97225 Phone (503) 297-6331 Fax (503) 297-6053	TITLE: LOCATOR MAPS		REVISED: 7/14/09
	ROCKY POINT MARINA 23586 NW ST. HELENS ROAD PORTLAND, OR 97231	RIVER: MULTNOMAH CHANNEL DATUM: NGVD	SHEET NO. 0



NOTE: Boxes Indicate Proposed House Boat Conversion/Additions

A. roadway
B. water well house, storage and treatment
C. recycling/garbage/mail center (upper)
D. recycling/garbage station (middle)
E. recycling/garbage station (lower)
F. security gate
G. parking (167 space)
H. trailer storage
I. sewage treatment plant
J. evaporation pond
K. boatyard shop/office
L. boat haul out pier
M. boat wash down pad and building
N. boatyard
O. power- Columiba PUD
P. telephone - CenturyTel
Q. fuel storage tanks
R. boat yard restroom
S. propane storage tanks

1. docks
2. marina office/store
3. fuel dock
4. marine sewer pump out
5. restrooms/laundry (4 bldg)

NOTE: Utilities Are Underground, Both Sides of Road From Main Ramp to Boat Yard

SCALE 1"=250'
1" INCH

Flowing solutions
Flowing Solutions
3305 SW 87th Avenue
Portland, OR 97225
Phone (503) 297-6331
Fax (503) 297-6053

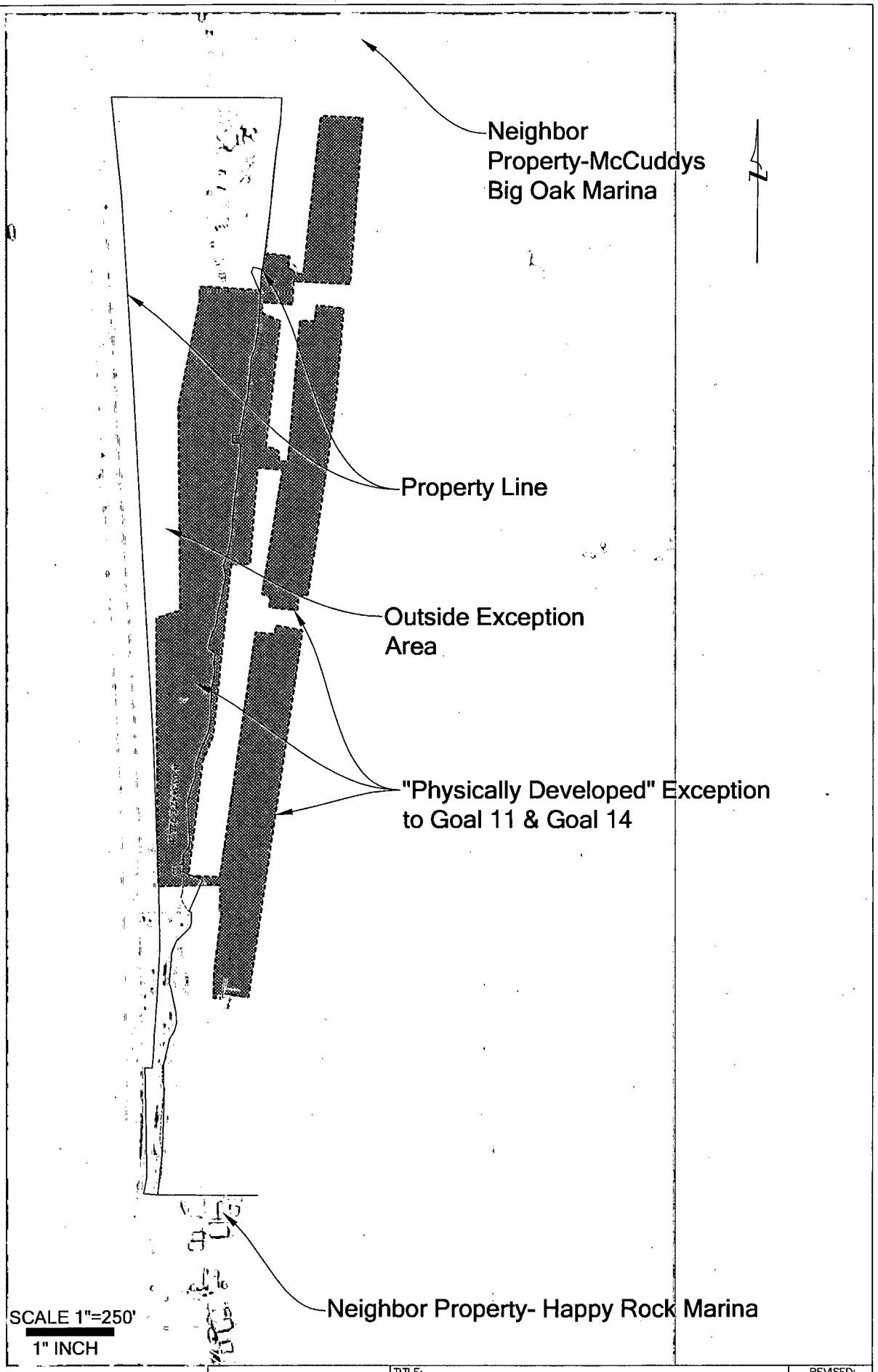
TITLE: EXHIBIT '1' KEY MAP

REVISED: 7/14/09

ROCKY POINT MARINA
23586 NW ST. HELENS ROAD
PORTLAND, OR 97231

RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

SHEET NO. 1



Flowing solutions

Flowing Solutions
3305 SW 87th Avenue
Portland, OR 97225
Phone (503) 297-6331
Fax (503) 297-6053

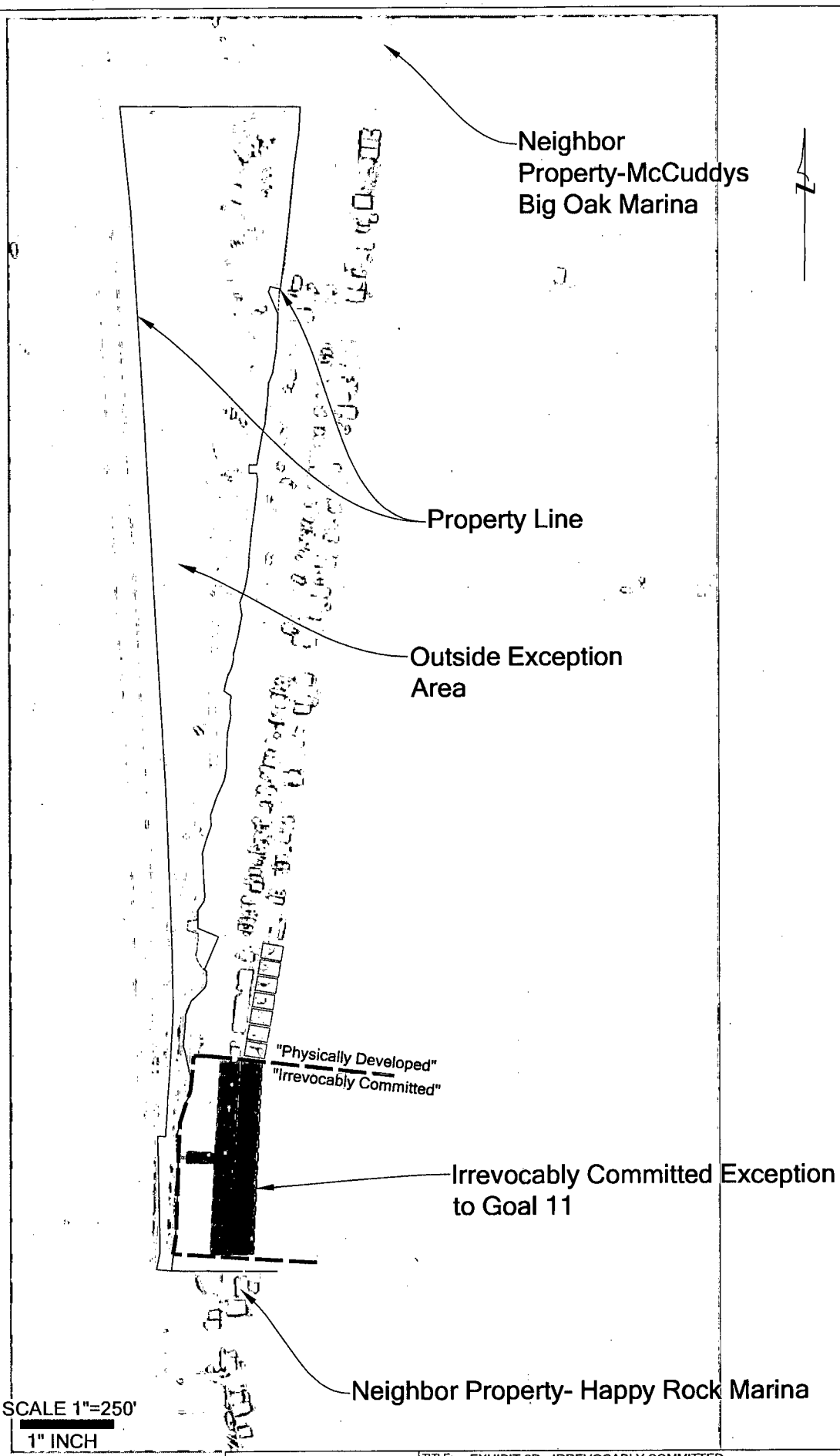
TITLE: EXHIBIT 2-A - GOAL 11 and GOAL 14 PHYSICALLY DEVELOPED EXCEPTION AREA

REVISED: 7/14/09

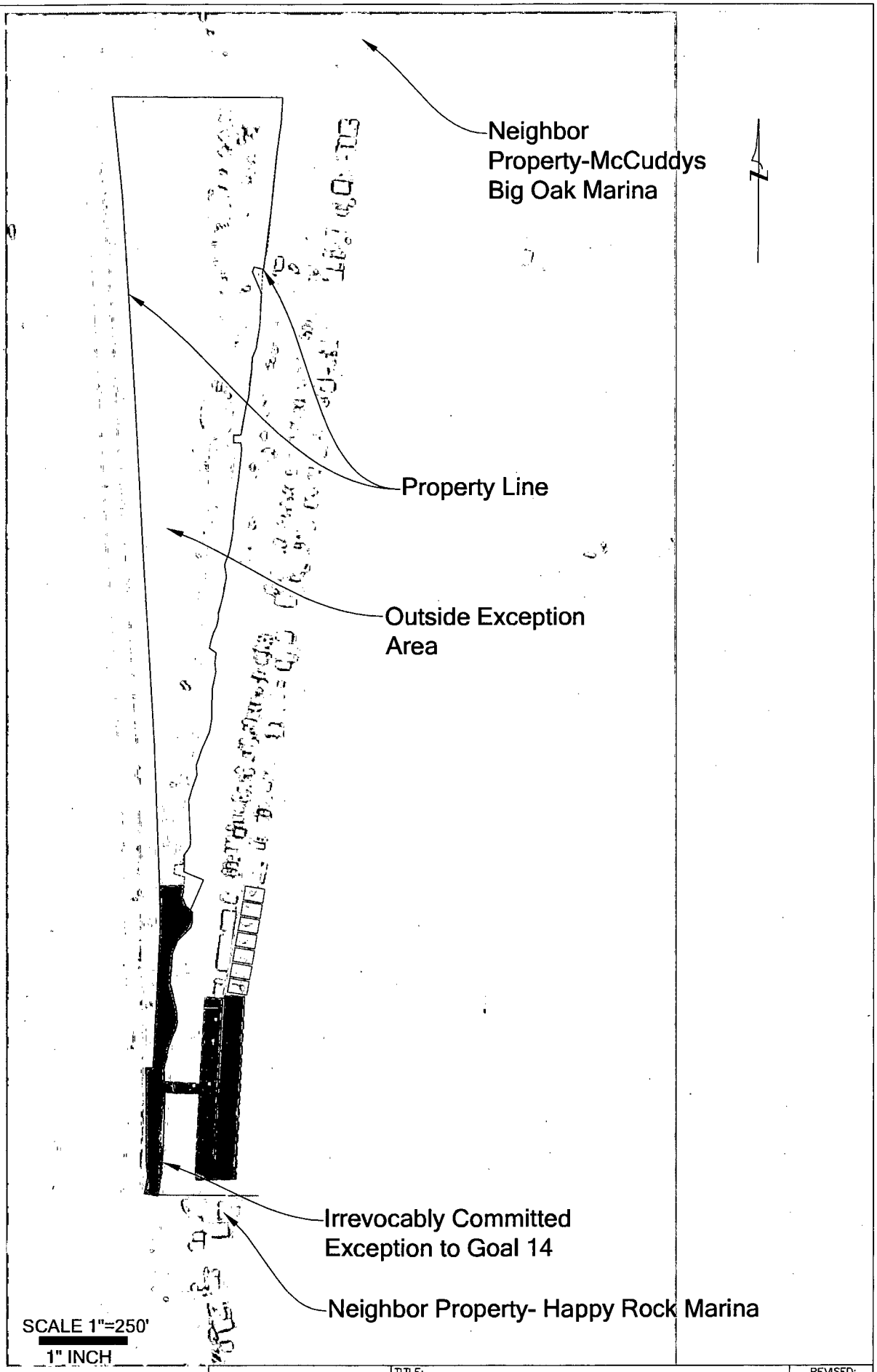
ROCKY POINT MARINA
23586 NW ST. HELENS ROAD
PORTLAND, OR 97231

RIVER: MULTNOMAH CHANNEL
DATUM: NGVD

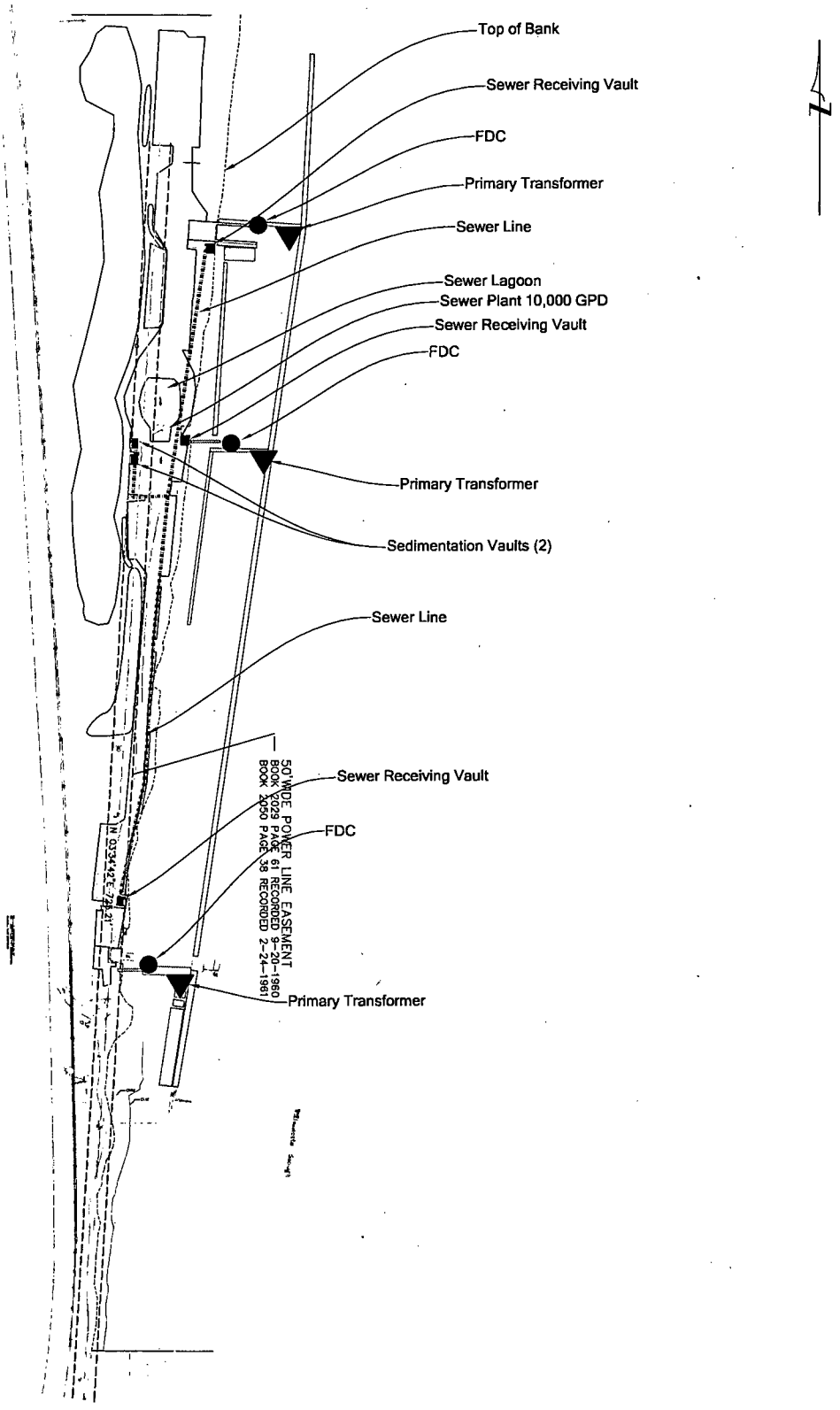
SHEET NO. 2



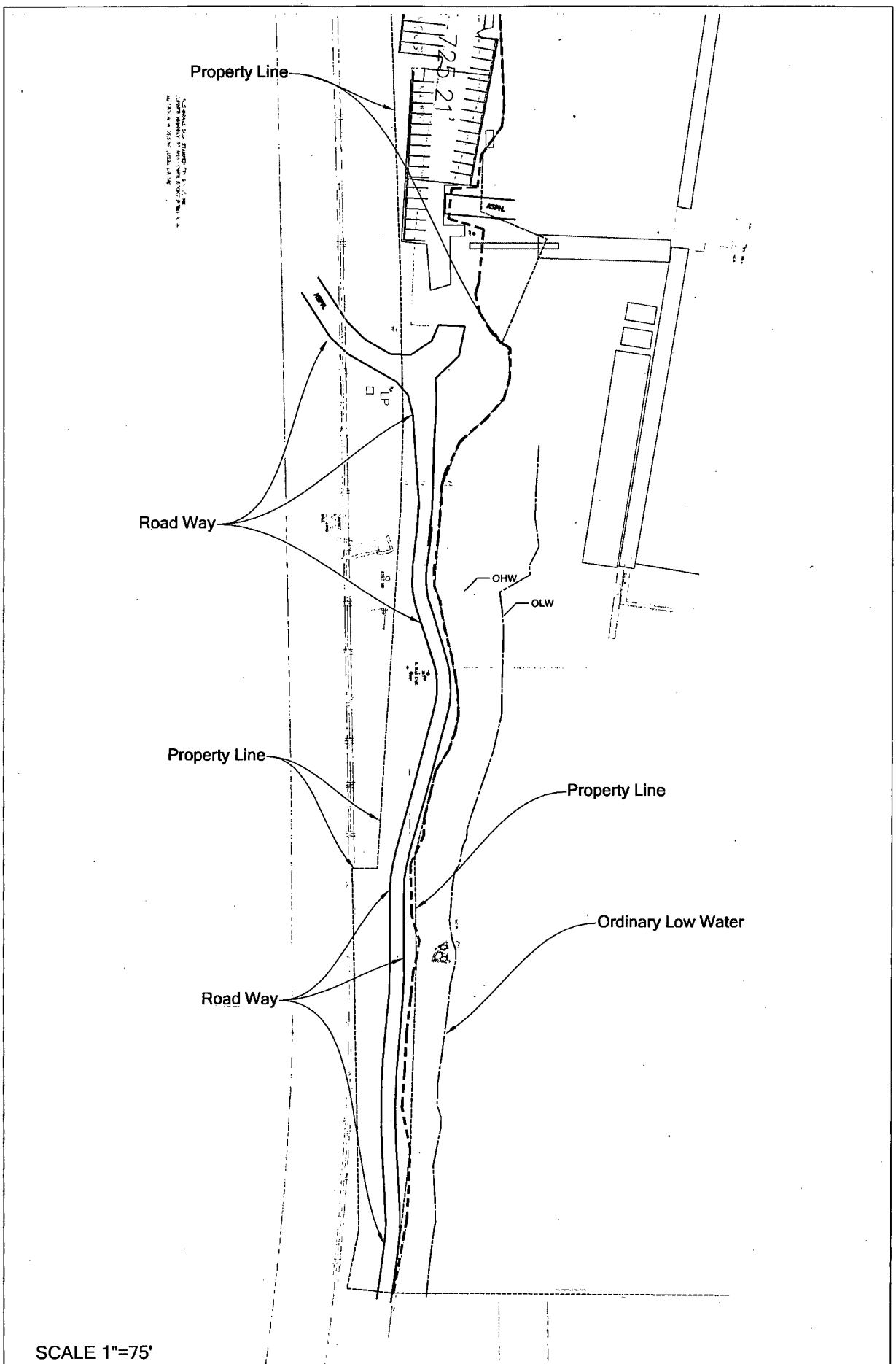
Flowing solutions Flowing Solutions 3305 SW 87th Avenue Portland, OR 97225 Phone (503) 297-6331 Fax (503) 297-6053	TITLE: EXHIBIT 2D - IRREVOCABLY COMMITTED GOAL 11 EXCEPTION AREA		REVISED: 7/14/09
	ROCKY POINT MARINA 23586 NW ST. HELENS ROAD PORTLAND, OR 97231	RIVER: MULTNOMAH CHANNEL DATUM: NGVD	SHEET NO. 5



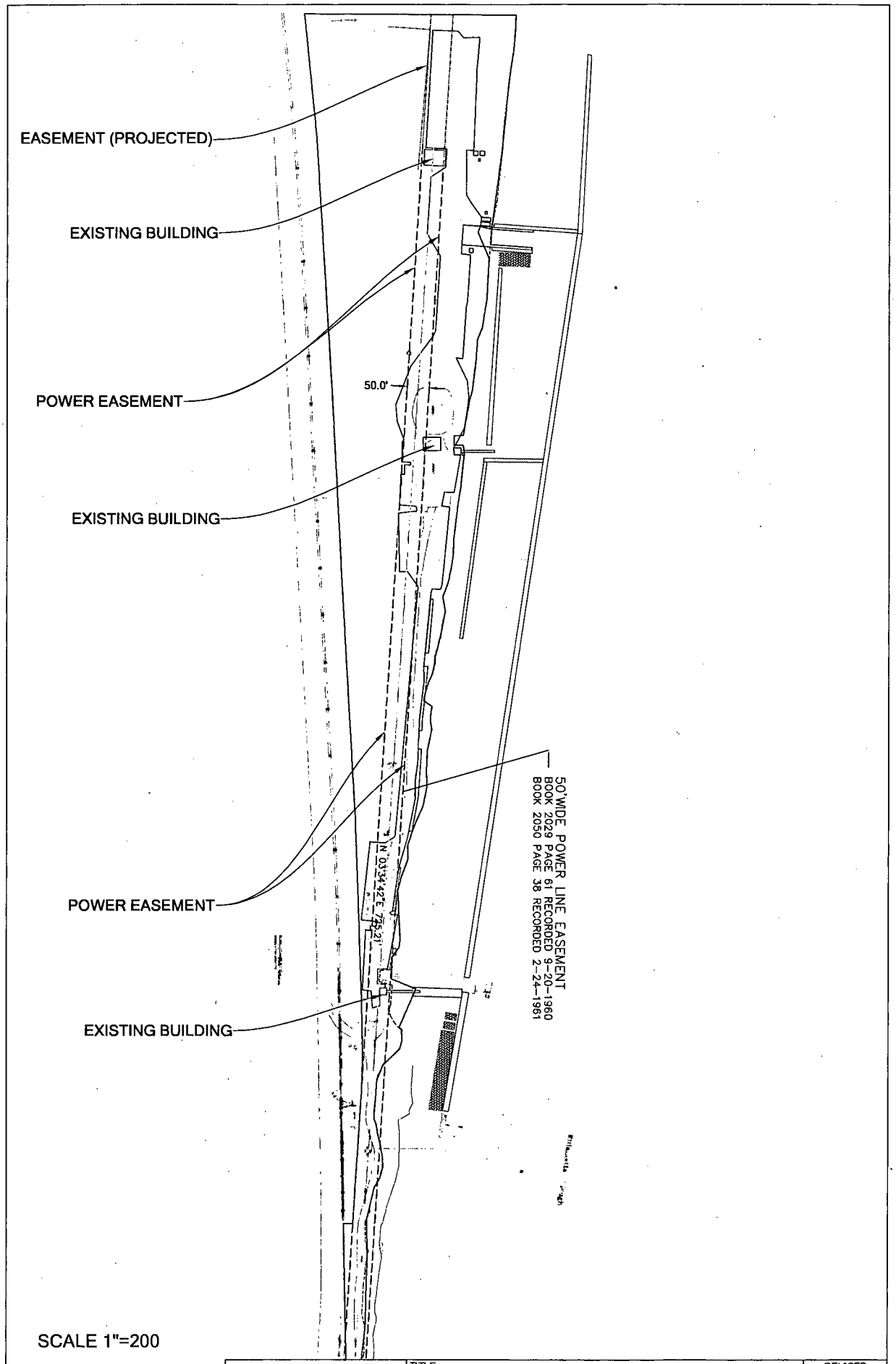
Flowing solutions Flowing Solutions 3305 SW 87th Avenue Portland, OR 97225 Phone (503) 297-6331 Fax (503) 297-6053	TITLE: EXHIBIT 2E - IRREVOCABLY COMMITTED EXCEPTION GOAL 14		REVISED: 7/14/09
	ROCKY POINT MARINA 23586 NW ST. HELENS ROAD PORTLAND, OR 97231	RIVER: MULTNOMAH CHANNEL DATUM: NGVD	SHEET NO. 6



Flowing solutions Flowing Solutions 3305 SW 87th Avenue Portland, OR 97225 Phone (503) 297-6331 Fax (503) 297-5053	TITLE: EXHIBIT '3" COMBINATION UTILITY PLAN (SEWER-FIRE-TRANSFORMERS)		REVISED: 7/14/09
	ROCKY POINT MARINA 23586 NW ST. HELENS ROAD PORTLAND, OR 97231	RIVER: MULTNOMAH CHANNEL DATUM: NGVD	SHEET NO. 7



Flowing solutions Flowing Solutions 3305 SW 87th Avenue Portland, OR 97225 Phone (503) 297-6331 Fax (503) 297-6053	TITLE: EXHIBIT '4" PROPERTY LINE-ROAD LOCATION		REVISED: 7/14/09
	ROCKY POINT MARINA 23586 NW ST. HELENS ROAD PORTLAND, OR 97231	RIVER: MULTNOMAH CHANNEL DATUM: NGVD	SHEET NO. 8



SCALE 1"=200

Flowing solutions Flowing Solutions 3305 SW 87th Avenue Portland, OR 97225 Phone (503) 297-6331 Fax (503) 297-6053	TITLE: EXHIBIT '4" POWER LINE EASEMENT		REVISED: 7/14/09
	ROCKY POINT MARINA 23586 NW ST. HELENS ROAD PORTLAND, OR 97231	RIVER: MULTNOMAH CHANNEL DATUM: NGVD	SHEET NO. 9

#1

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP

Please complete this form and return to the Board Clerk
*****This form is a public record*****

MEETING DATE: 1-22-10

SUBJECT: Rocky Point Marina

AGENDA NUMBER OR TOPIC: R-3

FOR: _____ AGAINST: ✓ THE ABOVE AGENDA ITEM

NAME: Wallace STODDARD

ADDRESS: 23548 NW St Helens Rd

CITY/STATE/ZIP: Portland OR

PHONE: DAYS: 503 347-2011 EVES: _____

EMAIL: _____ FAX: _____

SPECIFIC ISSUE: 100 ft Set Back

WRITTEN TESTIMONY: Renting space

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes.**
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

#2

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP

Please complete this form and return to the Board Clerk
*****This form is a public record*****

MEETING DATE: 1/21/10

SUBJECT: Rocky Pointe Expansion

AGENDA NUMBER OR TOPIC: R-3

FOR: _____ AGAINST: _____ THE ABOVE AGENDA ITEM

NAME: Ginger Curtis

ADDRESS: 23548 N.W. St Helens Road

CITY/STATE/ZIP: Portland Oregon 97231

PHONE: DAYS: 1-503-543-7464 EVES: _____

EMAIL: _____ FAX: _____

SPECIFIC ISSUE: _____

WRITTEN TESTIMONY: Yes

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes.**
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

January 19, 2010

To: Multnomah County Board of Commissioners

From: Estella (Ginger) Curtis
Happy Rock Moorage

Re: Rocky Pointe Expansion Hearing

Multnomah County Board of Commissioners,

My name is Ginger Curtis, owner of Happy Rock Moorage. Happy Rock Moorage lies south of the proposed Rocky Pointe Expansion project. There are some matters of concern I would like to address that affect my business.

Waterway setback- This is the most important concern. We need a wider setback (waterway) between the new expansion of Rocky Pointe Marina and Happy Rock Moorage than the original proposal of 50-feet. We need the ability to evict a tenant and my tenant needs to be able to move his house if he chooses. We already have a fifty foot by fifty foot floating home on that end that would not be able to move out with only a fifty-foot waterway and we have a space on the inside for a sixty-foot floating home. As a landlord, we have to abide by the Landlord Tenant laws of Oregon, which simply put means we need the ability to evict and they need the ability to leave. In addition, we have two fifty foot boat slips on that end. The boats in these slips need to be able to easily enter and leave their slips otherwise; we will not be able to rent them. That would be a loss of income for us. A boat needs (at least) its length plus ½ more of its length, which would be seventy-five feet to pull out or into their slips. It is doubtful that seventy-five feet will really be enough. It would be better to have one hundred feet if it is not easy for them to do this, they will not rent the slip.

In conclusion, we really need one hundred feet for a waterway between the expansion and Happy Rock Moorage. Mr. Tonneson suggested 50 to 60 feet and he would agree to move the house on the end if we needed more room to move a house. In the beginning, we thought

this would be enough but after discussion with boaters and floating home movers it became apparent that was not enough and we are not in favor of his suggestion. Having to rely on another marina's cooperation to move floating homes in and out is an awkward and uncertain position to be in. It also does not solve the problem with our boat slips. I would like the Commissioners and the hearings officer to consider the appropriate setback that would have the least impact on my business.

Parking- We have a very narrow one-lane access road to my moorage. It runs along the western side of the project. There are some natural cutouts that allow us to pull over for oncoming traffic. I want to be assured that there will be no parking in these areas or on our road and that signage will be provided to discourage parking. These cutouts are on railroad property and the railroad does not want these used for parking either.

Debris- Certain times of the year debris, such as logs, trees, misc. garbage floats downriver into the inside channel of our moorage. This collects on the inside walk of our entrance walkway and has to be pushed downriver. If we allow it to collect, it puts strain on our walkway besides becoming stagnant. At this time when we push it off, it float downriver onto Tonnesons' undeveloped 520 feet. Rocky point has a shirr log tied just above where their boats go in and out of their boat slips. Then they use a boat to push it off into the main channel. When this new expansion is in place there will be no room for a shirr log within the 50 feet he proposes between moorages. Some other method might have to be used. I am mentioning this because I don't want to lose the right that we have always had to remove debris.

If this project is approved, it is important that during construction my tenants have access in and out of the moorage.

I hope you will consider my requests if this project is approved.

Respectfully,

Ginger Curtis

DAVID CURTIS CONSTRUCTION
David Curtis
23528 NW St. Helens Rd.
Portland, Or. 97231
503-459-8179 Cell

January 20, 2010

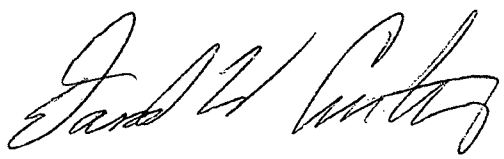
Bonded and Insured
CCB: 142318

To Whom It May Concern: I build and move floating structures for a living. I have been doing this for more than 18 years and have a lot of experience in moving floating structures by river. I do live at Happy Rock Moorage and have seen the plans of the proposed site of the expansion of Rocky Pointe Marina. In order to move any house or floating structure in or out of Happy Rock Marina and the proposed expansion of Rocky Point Marina I would need at least 100 feet in order to do so.

I also own a 30' power boat and it is very difficult to move a twin engine boat at that lenghth in tight areas. I would also recommended 100' for not just my power boat but for all the other boats including the sailboats that we have at Happy Rock Marina.

Thank you,

David Curtis



#3

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP

Please complete this form and return to the Board Clerk
*****This form is a public record*****

MEETING DATE: 1/21/10

SUBJECT: Proposed ordinance amending Sauvie Island/ Multnomah Channel Rural Area Plan

AGENDA NUMBER OR TOPIC: ~~R4~~

FOR: _____ AGAINST: X opposed to goal exceptions THE ABOVE AGENDA ITEM

NAME: Donna Matrazzo

ADDRESS: 19300 NW Sauvie Island Rd

CITY/STATE/ZIP: Portland OR 97231

PHONE: DAYS: 503 621-3049 EVES: same

EMAIL: matrazzo@msn.com FAX: _____

SPECIFIC ISSUE: _____

WRITTEN TESTIMONY: _____

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes.**
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

#4

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP

Please complete this form and return to the Board Clerk
*****This form is a public record*****

MEETING DATE: 1/21/2010

SUBJECT: Exemptions and permissions

AGENDA NUMBER OR TOPIC: T4-08-001 R-3

FOR: _____ AGAINST: X THE ABOVE AGENDA ITEM

NAME: Kim Atwill

ADDRESS: 23564 NW St. Helens Rd N8

CITY/STATE/ZIP: Portland, OR 97231

PHONE: DAYS: 602-363-0622 EVES: _____

EMAIL: kimatwill1@gmail.com FAX: _____

SPECIFIC ISSUE: The proposal submitted by Rocky Point Marina is vague, incomplete, and violates an easement with Happy Rock

WRITTEN TESTIMONY: Attached - presented

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes.**
3. State your name for the official record.
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IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

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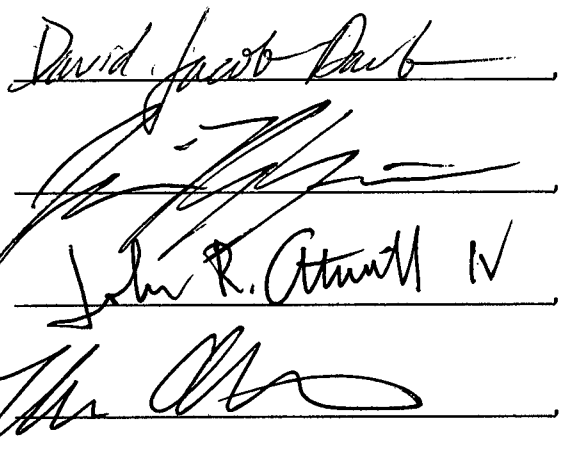
This document is in response to Resolution No. T4-08-001 before the Planning Commission for Multnomah County, Oregon, on behalf of the Happy Rock Moorage Home Owners' Association (Registry No. 650615-91), a Mutual Benefit Domestic Non-profit Corporation.



_____, President David Jacob-Daub

_____, Vice-president Justin Seeliger

_____, Treasurer John Atwill

_____, Secretary Kim Atwill

Under review are two specific requests that, if approved, would allow Rocky Pointe Marina to extend approximately 520 additional feet to the south. This would then allow for 30 additional houseboat slips that would require 65 additional parking spaces.

The two requests require:
1) exemption to Statewide Planning Goals 11 and 14; and
2) permission to exceed the residential density limit of one floating home per fifty feet of waterfront in the Rocky Pointe Marina.

The 25 houseboat-owning members of the Happy Rock Moorage Homeowners' Association (HRMHOA), the moorage adjacent to the south end of the Rocky Pointe Marina's (RPM) planned expansion, would like the Planning Commission to consider the following concerns before making a final ruling:

With regard to the overall impact of the proposal and subsequent expansion of the south-side of RPM:
HRMHOA concern: While the members understand that the Planning Commission requires exemptions prior to considering the building plans for RPM, they are concerned that there is only a vague outline of what this expansion will actually look like when completed. The members of the HRMHOA hope that any exemptions and/or permissions do not insinuate or otherwise streamline the approval of the final project and building plans. RPM has not provided details regarding how this expansion will be undertaken without impacting the river, river life, vegetation, and the residents living at either moorage.

In sum, the HRMHOA respectfully requests the exemptions and permissions be denied until greater detail be provided on a complete and comprehensive plan, including exact locations and dimensions of all proposal elements, and accompanying plans for minimizing negative environmental impacts during the expansion.

With regard to request #1 (exemption to Statewide Planning Goals 11 and 14):
a. Statewide Planning Goal 14 restricts rural development outside of the Urban Growth Boundary to one dwelling per parcel.
HRMHOA concern: The applicants' description of the south-side expansion area is too general and lacks relevant details:
Applicant: The exception area is basalt rock, wet, steeply sloped, or developed.

The south-side expansion area in question is also a very thin strip of waterfront bounded on the west by a railroad line. There is a steep bank between the waterline and the existing one lane road, and a second steep bank from the one lane road up to the railroad. In support of their exemption to the Urban Growth rule, the applicants purport that RPM already is urban in many regards and propose adding 'urban' elements to the shoreline parallel to the waterway expansion to accommodate recreational pursuits (e.g., a dog walking lane, horseshoes, volleyball, and

picnicking). The specifics on how to carve all of this out of a 45-degree-plus steep bank are not provided, leading the HRMHOA to wonder about the value of this argument.

Second, the road that serves Happy Rock Moorage is, at points, only wide enough for one vehicle, with steep banks on either side. The HRMHOA is skeptical whether the terrestrial improvements can be accomplished without inconveniencing the tenants at Happy Rock, including NOT using Happy Rock's lower parking lot as a construction turn around and/or parking overflow area.

In sum, the HRMHOA respectfully requests the exemption be denied until greater detail be provided on the locations of the proposed terrestrial improvements and how they will be achieved without negatively impacting the Happy Rock residents.

b. Statewide Planning Goal 11: The HRMHOA does NOT disagree that the RPM south-side expansion would qualify as a 'committed exception'.
HRMHOA concern: The details of the proposed expansion are vague and incomplete. In particular, an easement has been previously established that extends between RPM and Happy Rock to allow for houseboats to move in and out from the north end, shore-side of Happy Rock. In the event of an eviction, for example, the owner of Happy Rock has the right to force a houseboat and its owner to vacate the premises. The initial 50 foot easement was increased to 100 feet in 2009 to adjust for the current houseboat located on the shore-side north end; this houseboat is approximately 75 feet in length and would require at least 100 feet to be moved out. If the current expansion drawings are accepted without additional detail, the drawing only projects a 45-foot easement.

In sum, the HRMHOA respectfully requests that the exemption be denied until greater detail is provided on the proposed waterway expansion to ensure that it adheres to the 100 foot easement previously awarded.

With regard to request #2 (permission to exceed the residential density limit of one floating home per fifty feet of waterfront):
HRMHOA concern: The proposed waterway expansion area is "approximately 520 feet" (specific measurements requested previously). The existing density configuration would allow 10 houseboats to be moored parallel to this length of shoreline. RPM is proposing to *triple* that density. The HRMHOA concedes that moorage space is scarce, however this should not override the purpose of the density limit—protecting the quality of the living spaces and the environment that surrounds them.

Again, RPM has provided vague and incomplete plans for:

1. increased traffic on a one-lane road with numerous blind spots
2. increased pedestrians along identified one-lane road
3. increased traffic turning left (heading south) onto Highway 30

More significantly, RPM proposes to add 65 parking spaces to accommodate the residents who will reside in the proposed 30 additional houseboat slips. These 30 homes will 'float' along the moorage walkway parallel to the previously described thin strip of steep bank waterfront. Specifics on how RPM will create sufficient parking along this narrow passage is also lacking from the current proposal.

Estimating that a parking space is required to be at least 9' by 19', or 171 square feet, this would require more than 11,000 square feet of additional parking. RPM mentions filling in a portion of the river within the proposed expansion area along with a previously acquired permit to modify or fill in this area. Exactly how this will be done, and done *without* impacting the river, riverbank, and residents of either moorage is also not delineated.

In sum, the HRMHOA respectfully requests that the permission be denied until greater detail is provided on how the additional density can be accommodated within a very small strip of land. Of course, HRMHOA also requests that regardless of the number of houseboat slips permitted, the waterway expansion adheres to the 100 foot easement previously awarded.

Proposed expansion area in green. Blue line marks north boundary of Happy Rock Moorage. Distance between blue line and red line (south end of expansion) is egress easement; as depicted here is only 42'. Pink rectangle is location of proposed new ramp to access expansion houseboat slips. Red line along shore at north end of expansion marks 'assumed' area to be filled in to become parking spaces. The yellow marks the end of the parking area and is approximately 600 feet from the ramp.

#5a

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP

Please complete this form and return to the Board Clerk
*****This form is a public record*****

MEETING DATE: 21 JAN 2010

SUBJECT: Rocky Point

AGENDA NUMBER OR TOPIC: R-3

FOR: _____ AGAINST: X THE ABOVE AGENDA ITEM

NAME: Brian G. Hatch

ADDRESS: 13342 NW Newberry Rd

CITY/STATE/ZIP: Portland

PHONE: DAYS: _____ EVES: _____

EMAIL: _____ FAX: _____

SPECIFIC ISSUE: _____

WRITTEN TESTIMONY: Have written test

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes.**
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

January 21, 2010

TO: Multnomah County Planning Commissioners

FROM: Brian W. Lightcap
13342 NW Newberry Rd
Portland, Oregon 97231

RE: T4-08-001, Rocky Point Marina Expansion

Honorable Commission Members,

I have a unique perspective on the marina development in Columbia and Multnomah Counties. I served with Corps of Engineers as wetland program leader, both in permitting and enforcement. I have met with Mr. Tonneson in the early ninties in order to have him avoid wetland fills. We also discussed an expansion he had in mind at that time.

We discussed the impacts that parking of trailers had at that time and how wetlands were degraded that way. I don't exactly remember what happened with his proposal to expand to the north. But a County approval was given for 40 units in 1993. I would like to know what the Corps permit number was, in association with the 1993 County approval.

I believe that for reference between 1993 and now, since Federal and State wetland decisions may have been made at that time, the Commission and staff should review any such decision. It may be relevant to future County decisions.

Sincerely,

Brian Lightcap

As a post note, the Commission should note that the far flung rural community in this area, known as West Hills and Island Neighbors fought the Wildwood regional landfill proposal near this marina. Also the SWCD board does have a history of commenting and involvement on the proposed regional landfill, that was to be built at Wildwood Golf course. We eventually got our state association, OACD to endorse our opposition to the landfill. Our actions definitely helped the desireabilty of living at Rocky Point. But, for this community effort, living at Rocky Point would have been entirely different.

#56

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP

Please complete this form and return to the Board Clerk
*****This form is a public record*****

MEETING DATE: 21 JAN 10

SUBJECT: Rocky Point Expansion

AGENDA NUMBER OR TOPIC: R-3

FOR: _____ AGAINST: X THE ABOVE AGENDA ITEM

NAME: WEST MULTNOMAH SOIL & WATER BRIAN LIGHTCAP

ADDRESS: 2701 NW Vaughn St Suite 450

CITY/STATE/ZIP: Portland OR

PHONE: DAYS: 238-4775 x106 EVES: _____

EMAIL: _____ FAX: _____

SPECIFIC ISSUE: _____

WRITTEN TESTIMONY: Have written Testimony

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
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WEST MULTNOMAH

SOIL & WATER CONSERVATION DISTRICT

January 21, 2010

TO: Multnomah County ~~Planning~~ Commission
RE: T4-08-001

Our board has voted unanimously that I represent the board's concerns regarding this expansion of facilities. The following a just a few of the matters of concern

- We note that in 1993 the County rejected an expansion to 50 houseboats, allowing only 40. The public deserves in plain language, how the staff can now reconcile an additional 23 (applicant proposed 36).
- Page 11. The project continues to move forward with apparent integrity even with its tainted history of code violations and according to conversations with DSL, fill violations.
- We note that agencies with more comprehensive decision roles such as the County, DSL and the USACE are working on this project, but other agencies DEQ, WRD are also work on separate decisions, well in advance of the County.
- Page 15. We are confused by the statements regarding the present use versus actual capacity of the of the waste treatment system. Was the applicant saying that no disturbance of vegetation or wetlands will be required with the 36 floating home expansion in association with waste treatment?
- Page16. Non native species such as laurel and other plants are out of place in this wetland/floodplain area.
- Page 17. "Special area" designation of this or any other expansion because it is irrevocably committed to urban justification, is not a solution for floating homes built on and over public waters. Moorage development along the channel in both Columbia and Multnomah County has always been a concern. Does a special area designation help protect the Greenway's integrity?
- Page 19. The wetland impact areas are of great concern to the board. With all the impacts of miles of moorages, especially in Columbia County and as well as the Sauvie Island dike extending for 20 plus miles along the other side of the channel, the presence of all wetlands is very important. We will discuss ways to stress this point as we comment to the USACE and DSL. The USACE has to evaluate 26 public interest factors in its ultimate decision, including cumulative impacts. Un-enforced or unseen wetland fill violations are part of cumulative impacts, thus, diminishing the amount of wetlands that the applicant is divulging. Wetland degradation is also a cumulative impact.
- Page 41. Does the Commission believe that it is possible for the County to properly evaluate this matter because the Channel spans two counties. We would like to hear the Commission's view on which state, county or Federal agency can do a cumulative impact assessment. There are losses to shoreline vegetation quality, floodplain capacity, water quality, certainly esthetics (see page 49). That photo is just a small hint of cumulative impacts. Until this matter is dealt with, the notion of seriously deliberating beyond the very generous 1993 decision to allow 40 floating house is a moot point.
- Page 42. Unresolved parking issues were seen by staff; thus we don't know what the wetland and water quality impacts will be. Some idea of what the future will be on this matter would be to see the current parking constraints. Has there been wetland degradation or losses in attempt to address seasonal parking issues? This can not be evaluated just in a hearing room.
- Page 52. How important is it to point out that agencies such as the USACE, DSL, State Parks, Metro, ODFW and several others didn't comment.

It is very discouraging when private parties tread on the public trust by not adhering to earlier County and state decisions, especially when public land and waters are involved,. The landowner, County, the public, and many agencies worked very hard in 1993 to make the decision with all the complex factors to allow 40 floating houses. What is different about the history between that 1993 decision and what the County is embarking on now. The channel is a rather narrow waterway with waterway commerce, some moorages and a very significant number of fisheries

2701 NW VAUGHN STREET, SUITE 450 ♦ PORTLAND, OR 97210
P: 503.238.4775 ♦ F: 503.326.3942
WWW.WMSWCD.ORG

The West Multnomah SWCD and all its partners are working very hard for the last ten years for the restoration of Sturgeon Lake (connected to Multnomah Channel) and restoring juvenile salmonid rearing areas. We have been very successful at overcoming numerous environmental hurdles, gaining the attention and financial support of natural resource agencies and organizations. Water quality and habitat along the channel is an important factor for our projects success. We will always be concerned about developments along the channel. The above comments highlight our concerns and we ask that you provide the board an additional opportunity to comment in the areas mentioned above. There are other comments and information that the board may wish to provide after more discussion at our board meeting.

Sincerely,

Brian Lightcap
Chair WMSWCD

#C

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP

Please complete this form and return to the Board Clerk
*****This form is a public record*****

MEETING DATE: 1/21/10

SUBJECT: Rocky Pointe Marina

AGENDA NUMBER OR TOPIC:

FOR: _____ AGAINST: ✓ THE ABOVE AGENDA ITEM

NAME: Chris Foster

ADDRESS: 15400 NW McNamee Rd.

CITY/STATE/ZIP: Portland OR 97231

PHONE: DAYS: 503-621-3564 EVES:

EMAIL: FAX:

SPECIFIC ISSUE:

WRITTEN TESTIMONY: yes

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes.**
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IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

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2. Written testimony will be entered into the official record.

January 20, 2010

Christopher H. Foster
15400 NW McNamee Rd.
Portland OR 97231

Multnomah County Board of Commissioners
RE: Case File T4-08-001; Rocky Pointe Goal Exceptions 11 & 14

Dear Commissioners,

This case came to the Planning Commission last Spring. It was not easy. I believe that Goal Exceptions are a serious matter worthy of your careful consideration. This is especially so here, because this is first of several similar ones that might come forward in the near future. After re-examining this case, my own personal view is that part of the area possibly meets the Goal Exception standard, but part of it does not.

Is the Expansion Area Irrevocably Committed to Urban Use?

I would like to focus your attention on just one of the findings that must be made to grant the Goal Exceptions. That finding has to do with the open waterway expansion area that is in public ownership. The applicant recently purchased the shoreline and added it to the existing parcel. The finding must be that the vacant water area is "irrevocably committed" to residential use at urban densities. The Staff argues that by the mere fact that homes are among the several uses allowed, it is thereby committed.

Simply stated, the trouble with finding this area irrevocably committed is the the applicant neither owns the property nor is it currently developed. This is open waterway owned by the public. Further, the state lease by which the the applicant may use this area is by law revocable. There are a number of uses allowed here including docks, boat slips and services none of which needs a Goal Exception. I would argue that these uses are actually the predominate use on the Channel. Only the residential use at urban density requires Exceptions.

What's Next

If the Board finds all areas here meet the "irrevocably committed" standard, the range of additional dwellings is from 0 to 23. If the finding is that the expansion area does not meet the standard, but the existing developed areas does, that range will be set lower. The exact number will be determined by a hearings officer after considering numerous regulations, environmental and safety concerns. Those issues include but are no limited to additional permanent shading of the water as a detriment to salmon survival, recreational access, whether or not any additional parking can legally be added to the floodplain, wetland fill issues, facilities including the sewage treatment lagoon that are subject to flooding, and traffic safety concerns regarding rail crossing and highway access.

The Context

The policy issues in the background are inescapable. They range from how rigorously we should test Goal Exceptions (they are not mandatory and we can set additional tests), to the issues like to what degree we should be encouraging additional non-water dependent uses on the public waterway. There are a host of environmental questions too. I'm wondering whether granting the full Exception request will end up violating more County policies than it it satisfies. Beyond the decision, this is the Board's sole opportunity to comment or offer guidance to a hearings officer on this application. A step further is whether or not the Board should propose it own limitations under MCC1.15. 7115.

#7

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP

Please complete this form and return to the Board Clerk
*****This form is a public record*****

MEETING DATE: 1/20/10

SUBJECT: R-3 Service Level

AGENDA NUMBER OR TOPIC: R3

FOR: X AGAINST: _____ THE ABOVE AGENDA ITEM

NAME: Peter F Fry

ADDRESS: 3125 SW Main #105

CITY/STATE/ZIP: Portland, OR 97205

PHONE: DAYS: 503-279-2794 EVES: _____

EMAIL: _____ FAX: _____

SPECIFIC ISSUE: _____

WRITTEN TESTIMONY: _____

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes.**
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1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST
BUDGET MODIFICATION

(revised 12/31/09)

APPROVED: MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # R-4 DATE 01/21/2010
DEBORAH L. BOGSTAD, BOARD CLERK

Board Clerk Use Only	
Meeting Date:	01/21/2010
Agenda Item #:	R-4
Est. Start Time:	10:00 AM
Date Submitted:	01/11/2010

BUDGET MODIFICATION: DCHS - 23

Agenda Title:	**BUDGET MODIFICATION DCHS-23 Increasing Mental Health and Addiction Services Division Federal/State Appropriation by $4,525,523 in the State Mental Health Grant, $17,978 Beer and Wine Tax Revenue and $58,871 in Community Oriented Policing Services (COPS) Grant Funding**

Note: For all other submissions (i.e. Notices of Intent, Ordinances, Resolutions, Orders or Proclamations) please use the APR short form.

Requested Meeting Date:	January 21, 2010	**Amount of Time Needed:**	5 minutes
Department:	County Human Services	**Division:**	Mental Health and Addiction Services
Contact(s):	Kathy Tinkle		
Phone:	503-988-3691 **Ext.** 26858	**I/O Address:**	167/1/240
Presenter(s):	Ray Hudson		

General Information

1. What action are you requesting from the Board?

The Department of County Human Services recommends approval of budget modification DCHS-23. This budget modification adjusts the State Mental Health Grant funding in the Mental Health and Addiction Services Division (MHASD) for FY10 to reflect actual award amounts based on the final State 2009-2011 biennial budget.

Additionally, this budget modification increases the Community Oriented Policing Services (COPS) grant funds by $58,871 in MHASD Alcohol and Prevention Services for a net decrease in MHASD Alcohol and Prevention Services of ($19,410).

Beer and Wine Tax revenues also increase by $17,978 in the Addictions Detoxification and Post-

Detoxification Housing program.

2. **Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.**

At the time the Fiscal Year 2010 budget was prepared, the grant revenue projections were based on estimates provided by the State. On September 1, 2009, during the Board Briefing on the State Impacts, we discussed the need to return to the Board with a budget modification to adjust the state revenues. The County Financial Assistance Contract (CFAC) dated July 1, 2009 for the 2009-2011 biennium has now been issued; budget Modification DCHS-23 adjusts the DCHS Fiscal Year 2010 budget to reflect the actual award amounts. These changes impact the following programs:

Program Offer #25050 – Mental Health & Addiction Services Administration - increases $37,864 which allows Mental Health & Addictions Services Administration to administer these programs. This budget modification replaces County General Funds with State Mental Health Grant dollars funding a 0.15 FTE Program Development Specialist and a 0.19 FTE Office Assistant Senior allowing the general fund to be reallocated. These funds combined with the reduction of $23,253 in pass through and program support will allow $61,117 of CGF to be allocated to Program Offer #25090 to fund Detoxification Services provided by Central City Concern so that services remain at the FY09 level.

Program Offer #25080 – Adult Addictions Treatment Continuum - increases $3,353,839 in State Mental Health & Addictions Grant funds which allows the program to provide services at the Fiscal Year 2009 level.

Program Offer #25085 – Addiction Services Gambling Treatment and Prevention - funding has been decreased by ($75,000) in Gambling Addictions funding. This reduction reflect actual service levels provided to clients as estimated by the State therefore the reduction does not result in a loss of service.

Program Offer #25086 – Addiction Services Alcohol & Drug Prevention - with this budget modification A&D Prevention funding is decreased a net of $19,410 due to the following: the State Mental Health Grant decreased by $104,003 reducing the strengthening families program, thus eliminating youth outreach services; and, the COPS grant, through the Sheriff's Office, provides additional funding of $84,593 for Latino youth Alcohol & Drug prevention serving 500 youth.

Program Offer #25090 – Addictions Detoxification and Post-Detoxification Housing Services - Additional funding in the amount of $79,552 allows for detoxification services to continue for the 2,500 persons served annually with a successful completion rate of 75%. County General Fund savings from Program Offers #25050 MHASD Admin ($61,117) and #25091 Sobering ($457) increase funding by $61,574. Beer and Wine tax revenues of $17,978 contribute as well, increasing the detoxification service funding by $79,552 which preserves these services, provided by Central City Concern, at the FY09 level.

Program Offer #25091 – Sobering - County General Fund will decrease by $457 in pass through and program support allowing $457 of CGF to be allocated to Program Offer #25090 Addictions Detoxification and Post-Detoxification Services to keep these services at the FY09 level.

Program Offer #25094 – Family and Youth Addictions Treatment Continuum - Additional State Mental Health Grant funding in the amount of $421,969 will restore outpatient services to approximately 250 youths.

Program Offer #25098 – Enhanced Family Involvement Team (FIT) - Additional State Mental Health Grant funding of $865,132 allows the Enhanced Family Involvement Team program restore services to approximately 200 families.

3. **Explain the fiscal impact (current year and ongoing).**

   The State Mental Health Grant is continuously renewed with each State biennium at the established allocation amounts and will continue to be awarded with each new State biennium.

   The COPS grant is one time only funding being used for program enhancements. Services will reduce to the same level prior to grant award.

   The Beer and Wine tax revenue is dispersed by county populations and varies by consumption. This revenue is monitored and contracted out by expected receipts. Based on the actual amount received, the services associated with these funding sources will be adjusted accordingly.

4. **Explain any legal and/or policy issues involved.**

   N/A

5. **Explain any citizen and/or other government participation that has or will take place.**

   N/A

ATTACHMENT A

Budget Modification

If the request is a Budget Modification, please answer all of the following in detail:

- **What revenue is being changed and why? If the revenue is from a federal source, please list the Catalog of Federal Assistance Number (CFDA).**

  Budget Modification DCHS-23 adjusts the State Mental Health Grant funding in the Mental Health and Addiction Services Division (MHASD) as follows: Administration increases $37,864, Adult Addictions Treatment Continuum increases $3,353,839, Addiction Services Gambling Treatment and Prevention decrease $75,000, Addiction Services Alcohol and Drug Prevention Services decrease $104,003, Family and Youth Addictions Treatment Continuum increases $421,969 and Enhanced Family Involvement Team increases $865,132. Additionally, this budget modification increases COPS (CFDA# 16.710) grant funds by $84,953 in Addiction Services Alcohol & Drug Prevention. Beer and Wine Tax revenues also increase by $17,978 in the Addictions Detoxification and Post-Detoxification Housing program.

- **What budgets are increased/decreased?**

  Budget Modification DCHS-23 reappropriates the County General Fund budget as follows: Mental Health & Addictions Services Administration decreases ($61,117), Adult Addictions Treatment Continuum increases by $6,863, Addictions Detoxification and Post-Detoxification Housing increases by $61,574, Sobering decreases by ($457) and Family and Youth Addictions Treatment Continuum decreases by ($6,863).

  The Federal/State Fund increases in total by $4,602,372.

- **What do the changes accomplish?**

  Budget Modification DCHS-23 brings the MHASD FY10 budget into line with the final State grant awards by recognizing an increase over the adopted budget of $4,525,523 in State Mental Health Grant Funding. Additionally, the budget modification recognizes $17,978 in Beer and Wine Tax Revenue and $58,871 in COPS grant funding. Primarily provides for restoration of the A&D services to Fiscal Year 2009 service levels expected to be cut when the original Fiscal Year 2010 budget was developed and adopted.

- **Do any personnel actions result from this budget modification? Explain.**

  No permanent positions are added, however the funding of three positions have been modified to utilize Local Administration funds provided by State Mental Health Grant. Budget Modification DCHS-23 replaces 0.15 FTE CGF Program Development Specialist and a 0.19 FTE CGF Office Assistant Senior with grant funding.

- **If a grant, is 100% of the central and department indirect recovered? If not, please explain why.**

  These funding sources do not pay indirect. The State service elements are restricted to services only. The COPS grant may pay indirect directly to the Sheriff's Office, but not MHASD.

- **Is the revenue one-time-only in nature? Will the function be ongoing? What plans are in place to identify a sufficient ongoing funding stream?**

  The State Mental Health Grant is renewed each biennium. The COPS grant is one time only funding being utilized for program enhancements. At the expiration of the grant, services will reduce to the same level prior to grant award. The Beer and Wine tax revenue is dispersed by county populations

and varies by consumption. This revenue is monitored and contracted out by expected receipts.

- **If a grant, what period does the grant cover? When the grant expires, what are funding plans? Are there any particular stipulations required by the grant (i.e. cash match, in kind match, reporting requirements etc)?**

  The State Mental Health Grant (SMHG) period is July 1, 2009 through June 30, 2011. The COPS grant period is October 01, 2009 through September 30, 2010. The Beer and Wine Tax are received as monthly wire transfers. The COPS grant is one time only funding being utilized for program enhancements. Services will reduce to the same level prior to grant award.

NOTE: If a Budget Modification or a Contingency Request attach a Budget Modification Expense & Revenues Worksheet and/or a Budget Modification Personnel Worksheet.

ATTACHMENT B

BUDGET MODIFICATION: DCHS - 23

Required Signatures

Elected Official or Department/ Agency Director:	Kathy Sinkle for Joanne Fuller	**Date:** 01/06/10
Budget Analyst:		**Date:** 01/11/2010
Department HR:	Carolyn D. Edgett	**Date:** 01/06/10
Countywide HR:	Jori E. Dori	**Date:** 01/07/10

Budget Modification ID: DCHS-23

EXPENDITURES & REVENUES

Please show an increase in revenue as a negative value and a decrease as a positive value for consistency with SAP.

Budget/Fiscal Year: 2010

Line No.	Fund Center	Fund Code	Program #	Func. Area	Accounting Unit			Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
					Internal Order	*Cost Center*	*WBS Element*						
1	20-80	83081	25050	41			MA TXA AS 81	50190	(34,999)	0	34,999		IG-OP-Fed thru State
2	20-80	83081	25050	40			MA TXA AS 81	60000	20,982	0	(20,982)		Permanent - 700422 Pearson
3	20-80	83081	25050	40			MA TXA AS 81	60120	1,601	0	(1,601)		Premium
4	20-80	83081	25050	40			MA TXA AS 81	60130	6,071	0	(6,071)		Salary Related
5	20-80	83081	25050	40			MA TXA AS 81	60140	4,860	0	(4,860)		Insurance
6	20-80	83081	25050	40			MA TXA AS 81	60430	1,485	0	(1,485)		Intl Svc Bldg Mgmt
7	20-80	80001	25050	40			MA TXA AS GAMB LA	50190	0	(36,000)	(36,000)		IG-OP-Fed thru State
8	20-80	80001	25050	40			MA TXA AS GAMB LA	60000	0	20,982	20,982		Permanent - 700422 Pearson
9	20-80	80001	25050	40			MA TXA AS GAMB LA	60120	0	1,601	1,601		Premium
10	20-80	80001	25050	40			MA TXA AS GAMB LA	60130	0	6,071	6,071		Salary Related
11	20-80	80001	25050	40			MA TXA AS GAMB LA	60140	0	4,860	4,860		Insurance
12	20-80	80001	25050	40			MA TXA AS GAMB LA	60430	0	2,486	2,486		Intl Svc Bldg Mgmt
13	20-80	1000	25050	40			MA AS CONT CS CBN CGF	60160	69,680	46,427	(23,253)		Pass Through & Program Support
14	20-80	83060	25050	41			MA TXA AS 60	50190	(34,909)	(71,772)	(36,863)		IG-OP-Fed thru State
15	20-80	83060	25050	40			MA TXA AS 60	60000	20,892	44,672	23,780		Permanent - 700422 Pearson
16	20-80	83060	25050	40			MA TXA AS 60	60130	6,071	12,952	6,881		Salary Related
17	20-80	83060	25050	40			MA TXA AS 60	60140	4,860	11,062	6,202		Insurance
18	20-80	80001	25050	40			MA TXA AS LA	60000	120,046	105,051	(14,995)		Permanent - 700422 Pearson
19	20-80	80001	25050	40			MA TXA AS LA	60130	34,373	30,035	(4,338)		Salary Related
20	20-80	80001	25050	40			MA TXA AS LA	60140	33,842	29,952	(3,890)		Insurance
21	20-80	80001	25050	40			MA TXA AS LA	60430	3,301	8,204	4,903		Intl Svc Bldg Mgmt
22	20-80	1000	25050	40			MA TXA AS CGF	60000	8,785	0	(8,785)		Permanent
23	20-80	1000	25050	40			MA TXA AS CGF	60130	2,543	0	(2,543)		Salary Related
24	20-80	1000	25050	40			MA TXA AS CGF	60140	2,312	0	(2,312)		Insurance
25	20-80	1000	25050	40			MA TXA AS CGF	60430	5,904	0	(5,904)		Intl Svc Bldg Mgmt
26	20-80	80001	25050	40			MA TXA AS LA	60000	120,046	131,982	11,936		Permanent
27	20-80	80001	25050	40			MA TXA AS LA	60130	34,733	38,191	3,458		Salary Related
28	20-80	80001	25050	40			MA TXA AS LA	60140	33,842	36,768	2,926		Insurance
29	20-80	1000	25050	40			MA SA DM CGF	60000	575,226	563,290	(11,936)		Permanent
											(54,733)	**0**	**Total - Page 1**
											0	**0**	**GRAND TOTAL**

Budget Modification ID: DCHS-23

EXPENDITURES & REVENUES

Please show an increase in revenue as a negative value and a decrease as a positive value for consistency with SAP.

Budget/Fiscal Year: 2010

Line No.	Fund Center	Fund Code	Program #	Func. Area	Accounting Unit: Internal Order	Accounting Unit: Cost Center	Accounting Unit: WBS Element	Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
30	20-80	1000	25050	40			MA SA DM CGF	60130	176,202	172,744	(3,458)		Salary Related
31	20-80	1000	25050	40			MA SA DM CGF	60140	147,752	144,826	(2,926)		Insurance
32	20-80	83061	25080	41			MA AS CONT RES 61	50190	(2,170,082)	(4,493,881)	(2,323,799)		IG-OP-Fed thru State
33	20-80	83061	25080	40			MA AS CONT RES 61	60160	2,016,367	4,340,166	2,323,799		Pass Thru
34													
35	20-80	1000	25080	40			MA AS CONT RES CGF	60160	624,234	619,566	(4,668)		Pass Thru
36	20-80	83066	25080	41			MA AS CONT SYN OP 66	50190	(168,360)	(507,840)	(339,480)		IG-OP-Fed thru State
37	20-80	83066	25080	40			MA AS CONT SYN OP 66	60160	168,360	507,840	339,480		Pass Thru
38	20-80	83066	25080	41			MA AS CONT AD OUT TX 66	50190	(710,611)	(1,401,171)	(690,560)		IG-OP-Fed thru State
39	20-80	83066	25080	40			MA AS CONT AD OUT TX 66	60160	710,611	1,401,171	690,560		Pass Thru
40													
41	20-80	1000	25080	40			MA AS CONT AD OUT CGF	60160	657,750	669,281	11,531		Pass Thru
42													
43	20-80	83083	25085	41			MA AS CONT GAMB 83	50190	(55,000)	0	55,000		IG-OP-Fed thru State
44	20-80	83083	25085	40			MA AS CONT GAMB 83	60160	55,000	0	(55,000)		Pass Thru
45	20-80	83081	25085	41			MA AS CONT GAMB 81	50190	(700,000)	(720,000)	(20,000)		IG-OP-Fed thru State
46	20-80	83081	25085	40			MA AS CONT GAMB 81	60160	700,000	720,000	20,000		Pass Thru
47	20-80	83080	25085	41			MA AS CONT GAMB 80	50190	(100,000)	(60,000)	40,000		IG-OP-Fed thru State
48	20-80	83080	25085	40			MA AS CONT GAMB 80	60160	100,000	60,000	(40,000)		Pass Thru
49													
50	20-80	83070	25086	41			MA AS CONT PRV 70	50190	(125,000)	(194,896)	(69,896)		IG-OP-Fed thru State
51	20-80	83070	25086	40			MA AS CONT PRV 70	60160	125,000	194,896	69,896		Pass Thru
52	20-80	83070	25086	41			MA AS CONT PRV HAP 70	50190	(173,899)	0	173,899		IG-OP-Fed thru State
53	20-80	83070	25086	40			MA AS CONT PRV HAP 70	60160	173,899	0	(173,899)		Pass Thru
54													
55													
56	20-80	1000	25090	40			MA AS CONT DETOX CGF	60160	406,610	468,184	61,574		Pass Thru
57	20-80	23890	25090	41			MA AS CONT DETOX 2145	50180	(418,917)	(436,895)	(17,978)		IG-OP-Direct State
58	20-80	23890	25090	40			MA AS CONT DETOX 2145	60160	418,917	436,895	17,978		Pass Thru
											62,053	**0**	**Total - Page 2**
											0	**0**	**GRAND TOTAL**

Budget Modification ID: DCHS-23

EXPENDITURES & REVENUES

Please show an increase in revenue as a negative value and a decrease as a positive value for consistency with SAP.

Budget/Fiscal Year: 2010

Line No.	Fund Center	Fund Code	Program #	Func. Area	Accounting Unit			Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
					Internal Order	*Cost Center*	*WBS Element*						
59													
60	20-80	1000	25091	40			MA AS CONT SOBR CGF	60160	468,812	468,355	(457)		Pass Thru
61													
62	20-80	1000	25094	40			MA AS CONT YT RES CGF	60160	275,687	0	(275,687)		Pass Thru
63	20-80	1000	25094	40			MA AS CONT YT RES CGF	60150	0	267,589	267,589		County Match & Sharing
64	20-80	83066	25094	41			MA AS CONT YTH TX 66	50190	0	(271,451)	(271,451)		IG-OP-Fed thru State
65	20-80	83066	25094	40			MA AS CONT YTH TX 66	60160	0	271,451	271,451		Pass Thru
66	20-80	83066	25094	41			MA AS CONT AF AM YTH TX	50190	0	(328,175)	(328,175)		IG-OP-Fed thru State
67	20-80	83066	25094	40			MA AS CONT AF AM YTH TX	60160	0	328,175	328,175		Pass Thru
68													
69	20-80	1000	25094	40			MA AS CONT YTH TX CGF	60160	127,373	128,608	1,235		Pass Thru
70	20-80	83060	25094	41			MA AS CONT YTH TX 60	50190	-	(124,199)	(124,199)		IG-OP-Fed thru State
71	20-80	83060	25094	40			MA AS CONT YTH TX 60	60160	0	124,199	124,199		Pass Thru
72	20-80	83067	25094	41			MA AS CONT AF AM YTH 67	50190	(54,750)	0	54,750		IG-OP-Fed thru State
73	20-80	83067	25094	40			MA AS CONT AF AM YTH 67	60160	54,750	0	(54,750)		Pass Thru
74	20-80	83071	25094	41			MA AS CONT AF AM YTH 71	50190	(247,106)	0	247,106		IG-OP-Fed thru State
75	20-80	83071	25094	40			MA AS CONT AF AM YTH 71	60160	247,106	0	(247,106)		Pass Thru
76	20-80	32213	25098	41			MA AS CONT FIT COPS	50170	(25,722)	0	25,722		IG-OP-Direct Fed
77	20-80	32213	25098	40			MA AS CONT FIT COPS	60160	25,722	0	(25,722)		Pass Thru
78	20-80	83060	25098	41			MA AS CONT SP FIT 60	50190	(105,142)	(272,436)	(167,294)		IG-OP-Fed thru State
79	20-80	83060	25098	40			MA AS CONT SP FIT 60	60160	105,142	272,436	167,294		Pass Thru
80	20-80	83066	25098	41			MA AS CONT FIT ACYF 66	50190	0	(723,560)	(723,560)		IG-OP-Fed thru State
81	20-80	83066	25098	40			MA AS CONT FIT ACYF 66	60160	0	723,560	723,560		Pass Thru
82	20-80	32213	25086	41			MA AS CONT YTH OUT COP	50170	0	(84,593)	(84,593)		IG-OP-Direct Fed
83	20-80	32213	25086	40			MA AS CONT YTH OUT COP	60160	0	84,593	84,593		Pass Thru
84										0			
85										0			
86										0			
87										0			
											(7,320)	**0**	**Total - Page 3**
											0	**0**	**GRAND TOTAL**

ANNUALIZED PERSONNEL CHANGE

Change on a full year basis even though this action affects only a part of the fiscal year (FY).

							ANNUALIZED		
Fund	Job #	HR Org	CC/WBS/IO	Position Title	Position Number	FTE	BASE PAY	FRINGE	INSUR	TOTAL
83081	6088	65186	MA TXA AS 81	Prg Dev Spec Sr - Pearson	700422	(0.30)	(20,982)	(6,071)	(4,860)	(31,913)
80001	6088	65186	MA TXA AS GAMB LA	Prg Dev Spec Sr - Pearson	700422	0.30	20,982	6,071	4,860	31,913
80001	6088	65186	MA TXA AS LA	Prg Dev Spec Sr - Pearson	700422	(0.34)	(23,780)	(6,881)	(6,202)	(36,863)
83060	6088	65186	MA TXA AS 60	Prg Dev Spec Sr - Pearson	700422	0.34	23,780	6,881	6,202	36,863
1000	6021	65186	MA TXA AS CGF	Prg Dev Spec - Kron	711840	(0.15)	(8,785)	(2,543)	(2,312)	(13,640)
80001	6021	65186	MA TXA AS LA	Prg Dev Spec - Kron	711840	0.15	8,785	2,543	2,312	13,640
80001	6002	63279	MA TXA AS LA	OA Sr - Zarosinski	713146	0.19	11,936	3,458	2,926	18,320
1000	6002	63279	MA SA DM CGF	OA Sr - Zarosinski	713146	(0.19)	(11,936)	(3,458)	(2,926)	(18,320)
										0
										0
										0
										0
										0
										0
										0
				TOTAL ANNUALIZED CHANGES		0.00	0	0	0	0

CURRENT YEAR PERSONNEL DOLLAR CHANGE

Calculate costs/savings that will take place in this FY; these should explain the actual dollar amounts being changed by this Bud Mod.

							CURRENT YEAR		
Fund	Job #	HR Org	CC/WBS/IO	Position Title	Position Number	FTE	BASE PAY	FRINGE	INSUR	TOTAL
83081	6088	65186	MA TXA AS 81	Prg Dev Spec Sr - Pearson	700422	(0.30)	(20,982)	(6,071)	(4,860)	(31,913)
80001	6088	65186	MA TXA AS GAMB LA	Prg Dev Spec Sr - Pearson	700422	0.30	20,982	6,071	4,860	31,913
80001	6088	65186	MA TXA AS LA	Prg Dev Spec Sr - Pearson	700422	(0.34)	(23,780)	(6,881)	(6,202)	(36,863)
83060	6088	65186	MA TXA AS 60	Prg Dev Spec Sr - Pearson	700422	0.34	23,780	6,881	6,202	36,863
1000	6021	65186	MA TXA AS CGF	Prg Dev Spec - Kron	711840	(0.15)	(8,785)	(2,543)	(2,312)	(13,640)
80001	6021	65186	MA TXA AS LA	Prg Dev Spec - Kron	711840	0.15	8,785	2,543	2,312	13,640
80001	6002	63279	MA TXA AS LA	OA Sr - Zarosinski	713146	0.19	11,936	3,458	2,926	18,320
1000	6002	63279	MA SA DM CGF	OA Sr - Zarosinski	713146	(0.19)	(11,936)	(3,458)	(2,926)	(18,320)
										0
										0
										0
										0
										0
										0
										0
				TOTAL CURRENT FY CHANGES		0.00	0	0	0	0

MULTNOMAH COUNTY
AGENDA PLACEMENT REQUEST
BUDGET MODIFICATION

(Revised 12/31/09)

APPROVED: MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # R-5 DATE 01/21/2010
DEBORAH L. BOGSTAD, BOARD CLERK

Board Clerk Use Only	
Meeting Date:	01/21/2010
Agenda Item #:	R-5
Est. Start Time:	10:05 AM
Date Submitted:	01/13/2010

BUDGET MODIFICATION: MCSO - 02

Agenda Title:	**BUDGET MODIFICATION MCSO-02 Amending the TriMet Contract, an Intergovernmental Agreement, and Appropriating an Additional $282,046 and 2.00 FTE in the Justice Services Special Operations Fund**

Note: For all other submissions (i.e. Notices of Intent, Ordinances, Resolutions, Orders or Proclamations) please use the APR short form.

Requested Meeting Date:	January 21, 2010	**Amount of Time Needed:**	5 Minutes
Department:	Sheriff's Office	**Division:**	Enforcement
Contact(s):	Wanda Yantis, Budget Manager		
Phone:	503-988-4455 **Ext.** 84455	**I/O Address:**	503/350
Presenter(s):	Captain Jason Gates, Wanda Yantis		

General Information

1. What action are you requesting from the Board?

The Sheriff's Office requests approval of Budget Modification MCSO-02 to amend an Intergovernmental Agreement with TriMet to increase Multnomah County Sheriff's Office presence from 4.00 FTE to 6.00 FTE, adding a Deputy Sheriff and an Enforcement Sergeant.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

The Sheriff's Office currently has an Intergovernmental Agreement with TriMet to provide 4.00 FTE Deputy Sheriffs to be part of the TriMet Police Division. Per mutual agreement the Sheriff's Office presence has increased to 6.00 FTE, adding a Deputy Sheriff and a Law Enforcement Sergeant. This Bud Mod is tied to FY 10 Program Offer 60071 MCSO Tri-Met.

3. **Explain the fiscal impact (current year and ongoing).**

   This will increase the Enforcement Division's revenue by $282,046 in the Dedicated Fund. The funds also cover the central indirect for administration of the funds.

4. **Explain any legal and/or policy issues involved.**

   N/A

5. **Explain any citizen and/or other government participation that has or will take place.**

   The Portland Police Bureau is also a party to the original agreement.

ATTACHMENT A

Budget Modification

If the request is a Budget Modification, please answer all of the following in detail:

- **What revenue is being changed and why? If the revenue is from a federal source, please list the Catalog of Federal Assistance Number (CFDA).**

  This will increase the Enforcement Division's revenue by $282,046 in the Dedicated Fund.

- **What budgets are increased/decreased?**
  - The Sheriff's Office will increase their Dedicated Fund budget by $282,046
  - Increase Dept Indirect by $14,087
  - Increase Central Indirect by $7,096
  - Increase Risk Fund by $38,949
- **What do the changes accomplish?**

  This will increase the Enforcement Division's revenue by $282,046 in the Dedicated Fund. The funds also cover the central indirect for administration of the funds.

- **Do any personnel actions result from this budget modification? Explain.**

  Yes, this will increase the Sheriff's Office presence in TriMet patrol from 4.00 FTE to 6.00 FTE, adding a Law Enforcement Deputy and a Law Enforcement Sergeant.

- **If a grant, is 100% of the central and department indirect recovered? If not, please explain why.**

  All overhead costs are covered.

- **Is the revenue one-time-only in nature? Will the function be ongoing? What plans are in place to identify a sufficient ongoing funding stream?**

  This is an ongoing service Intergovernmental Agreement which ends on June 30, 2010 if not renewed. If this Intergovernmental Agreement is not renewed, our participation will end. This is tied to program offer 60071 MCSO Tri-Met Unit in the FY 10 Budget.

- **If a grant, what period does the grant cover? When the grant expires, what are funding plans? Are there any particular stipulations required by the grant (i.e. cash match, in kind match, reporting requirements etc)?**

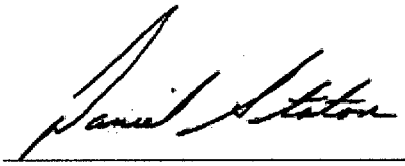
  N/A

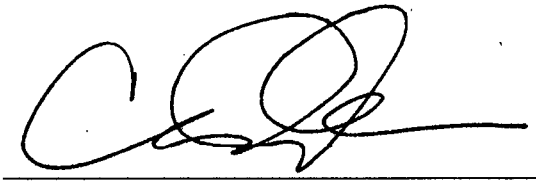
NOTE: If a Budget Modification or a Contingency Request attach a Budget Modification Expense & Revenues Worksheet and/or a Budget Modification Personnel Worksheet.

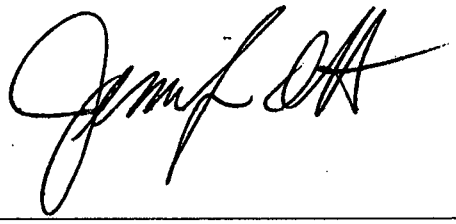
ATTACHMENT B

BUDGET MODIFICATION: MCSO - 02

Required Signatures

Elected Official or Department/ Agency Director:  **Date: 01/13/2010**

Budget Analyst:  **Date: 01/13/2010**

Department HR:  **Date: 01/13/2010**

Countywide HR: _____ **Date:** _____

TRIMET

December 11, 2009

Sheriff Dan Staton
501 SE Hawthorne Blvd
Suite 350
Portland, OR 97214

RE: MCSO Staffing to TriMet Transit Police Division

Dear Sheriff Staton:

This letter is issued pursuant to the Intergovernmental Agreement among the Tri-County Metropolitan Transportation District of Oregon (TriMet), the Multnomah County Sheriff's Office (MCSO) and the City of Portland (Portland), for TriMet Transit Police Services, as amended, to establish or change the number of police officers assigned from the MCSO to the TriMet Transit Police Division.

Staffing as of December 9, 2009:

- One Sergeant (Greg Lange)
- Five Deputies (Rafael Cortada, Mike Heffernan, Jason Maurry, Rod Nuzum, Kerri Oman)

Any future change in the number of officers assigned from the MCSO to the TriMet Transit Police Division is subject to mutual agreement by the parties by subsequent letter in similar form.

Sincerely,

Stephan R. Bruta
Executive Director, Operations
TriMet

Agreed to by MCSO:

Sheriff of Multnomah County — Date: 12-15-09

Agreed to by City of Portland:

Transit Police Commander — Date: 12-14-09

Budget Modification ID: MCSO-02

EXPENDITURES & REVENUES

Please show an increase in revenue as a negative value and a decrease as a positive value for consistency with SAP.

Budget/Fiscal Year: 2010

Line No.	Accounting Unit							Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
	Fund Center	Fund Code	Program #	Func. Area	*Internal Order*	*Cost Center*	*WBS Element*						
1	60-50	1516	60071	50		601645		50236		(282,046)	(282,046)		IG-Charges for Srvs
2	60-50	1516	60071	50		601645		60000		163,367	163,367		Permanent
3	60-50	1516	60071	50		601645		60130		58,548	58,548		Salary-Related
4	60-50	1516	60071	50		601645		60140		38,949	38,949		Insurance
5	60-50	1516	60071	50		601645		60350		7,096	7,096		Central Indirect
6	60-50	1516	60071	50		601645		60355		14,087	14,087		Dept Indirect
7										0			
8	60-20	1000		50		604020		50370		(14,087)	(14,087)		Dept Indirect
9	60-20	1000		50		604020		60240		14,087	14,087		Supplies
10										0			
11	19	1000		20		9500001000		50310		(7,096)	(7,096)		Indirect Revenue
12	19	1000		20		9500001000		60470		7,096	7,096		Contingency
13										0			
14	72-10	3500		20		705210		50316		(38,949)	(38,949)		Risk Fund
15	72-10	3500		20		705210		60330		38,949	38,949		Risk Fund
16										0			
17										0			
18										0			
19										0			
20										0			
21										0			
22										0			
23										0			
24										0			
25										0			
26										0			
27										0			
28										0			
29										0			
											0	0	**Total - Page 1**
											0	0	**GRAND TOTAL**

ANNUALIZED PERSONNEL CHANGE

Change on a full year basis even though this action affects only a part of the fiscal year (FY).

							ANNUALIZED			
Fund	Job #	HR Org	CC/WBS/IO	Position Title	Position Number	FTE	BASE PAY	FRINGE	INSUR	TOTAL
1516	2005		601645	Sergeant		1.00	91,997	33,073	20,506	145,576
1516	2025		601645	Deputy Sheriff		1.00	71,370	25,475	18,443	115,288
										0
										0
										0
										0
										0
										0
										0
										0
										0
										0
										0
										0
				TOTAL ANNUALIZED CHANGES		2.00	163,367	58,548	38,949	260,864

CURRENT YEAR PERSONNEL DOLLAR CHANGE

Calculate costs/savings that will take place in this FY; these should explain the actual dollar amounts being changed by this Bud Mod.

							CURRENT YEAR			
Fund	Job #	HR Org	CC/WBS/IO	Position Title	Position Number	FTE	BASE PAY	FRINGE	INSUR	TOTAL
1516	2005		601645	Sergeant		1.00	91,997	33,073	20,506	145,576
1516	2025		601645	Deputy Sheriff		1.00	71,370	25,475	18,443	115,288
										0
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										0
										0
										0
										0
										0
										0
				TOTAL CURRENT FY CHANGES		2.00	163,367	58,548	38,949	260,864

#1

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP

Please complete this form and return to the Board Clerk
*****This form is a public record*****

MEETING DATE: 1-21-10

SUBJECT: Public Housing Data

AGENDA NUMBER OR TOPIC: Public Comment

FOR: _____ AGAINST: _____ THE ABOVE AGENDA ITEM

NAME: Richard Fellmyer

ADDRESS: 9124 N. McKenna

CITY/STATE/ZIP: Portland OR 97203

PHONE: DAYS: _____ EVES: _____

EMAIL: _____ FAX: _____

SPECIFIC ISSUE: _____

WRITTEN TESTIMONY: Yes - attached

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes.**
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

Public Comment

My name is Richard Ellmyer. I am a candidate for the North Portland House seat in the May Democratic Primary. On December 28 I sent you a request for Public Housing Statistical Data which I mentioned was intended to be used as a basis for discussion with voters during my campaign for public office. Despite my admonition that time was of the essence for 24 days of my campaign you have not provided me or the voters with any one of the four separate reports I requested.

Here are some facts for the record:

1. All of you accept mayor Adams' assertion that there is NO PUBLIC housing in Portland only affordable housing.
2. All of you oppose requiring public documents to use the term, "public housing" when the subject matter of the document refers to programs and policies where the following conditions are met: Public Housing = Means Test + Government Subsidy + Rental Agreement.
3. All of you support mayor Adams' policy of UNLIMITED neighborhood concentration of public housing.
4. None of you have requested nor do you have an interest in statistical data that would inform you about the total number and the neighborhood location of every public housing client in Multnomah county.
5. All of you oppose a cap of 15% on the number of public housing clients per neighborhood.
6. All of you oppose a $30,000 maximum income for a one person household that should be set to enter and remain in any public housing program in Oregon and that priority for HAP housing should be given to people without homes or who have incomes under $30,000.
7. All of you oppose a regional policy of equitable distribution of public housing under the administrative control of Metro.
8. All of you are aware that HAP staff *cannot* produce authentic, accurate, complete and timely Public Housing Statistical Data records for every one of the 33,000 clients HAP claims.
9. All of you oppose giving the taxpayers that provide the eighty million or so dollars in HAP's budget authentic, accurate, complete and timely Public Housing Statistical Data.
10. None of you are prepared to try and correct the imbalance between 77% qualified students for the free lunch program at the Roosevelt school cluster and 9% at the Lincoln school cluster which is primarily caused by deliberately overloading North Portland with public housing clients.

If any of these statements of fact are incorrect for individual commissioners then please let me know in writing via email by January 28th.

I support a public policy of equitable distribution of public housing, a cap of 15% on the number of public housing clients per neighborhood, a $30,000 maximum income for a one person household to enter and remain in any public housing program in Oregon and the right of taxpayers to authentic, accurate, complete and timely Public Housing Statistical Data.

#2

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP

Please complete this form and return to the Board Clerk
*****This form is a public record*****

MEETING DATE: 1-21-10

SUBJECT: Reserves

AGENDA NUMBER OR TOPIC: Public Comment

FOR: _____ AGAINST: _____ THE ABOVE AGENDA ITEM

NAME: Carol Chesarek

ADDRESS: 13300 NW Germantown Road;

CITY/STATE/ZIP: Portland, OR 97231

PHONE: DAYS: _____ EVES: _____

EMAIL: _____ FAX: _____

SPECIFIC ISSUE: _____

WRITTEN TESTIMONY: # Attached

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes.**
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

Carol Chesarek
13300 NW Germantown Road
Portland, Oregon 97231

January 21, 2010

Chair Wheeler and Multnomah County Commissioners
501 SE Hawthorne Blvd.
Portland, Oregon 97214

RE: Rural and Urban Reserves

Chair Wheeler and Commissioners,

I want to use this opportunity to provide a few comments on Urban and Rural Reserves that I wasn't able to squeeze into my 2 minutes of testimony in December.

There are a few aspects of governance that I want to make sure are clear.

First, while Metro would prefer that all UGB expansion areas will be annexed by cities, the county cannot require that Metro wait until there is an adjacent city before adding Urban Reserves land to the UGB.

Because there might not be an adjacent city within 40 to 50 years, a requirement like that would make it impossible to determine the capacity of Urban Reserves.

This is less of a concern for Clackamas and Washington Counties -- they already serve large urban unincorporated areas. But if our county has an Urban Reserve that is not adjacent to a city, we could end up with another Area 93.

Second, undesignated land next to the UGB can be added to the UGB at Metro's discretion. If Urban Reserves are created, they will be the first priority for UGB expansion.

But subsection (3)(a) of ORS 197.298 allows Metro to go around the priorities if there are:

> "specific types of identified land needs [that] cannot be reasonably accommodated on higher priority lands...."

Metro has successfully used this "exception" provision twice in the last 10 years, adding land to the UGB for a Beaverton school and adding a large parcel of industrial land in Hillsboro along Evergreen Road. LCDC approved both of these "exceptions."

If Metro designates Urban Reserves, it will be hard to satisfy the condition in ORS 197.298(3)(a) while there is a large amount of land in urban reserves, maybe 15 or 20 years.

But even if Metro is unlikely to add undesignated land to the UGB in the near future, that won't keep highly motivated property owners from trying. There will be proposals for UGB expansion in undesignated areas at least every 5 years.

Only 4 votes on Metro Council are needed to approve one of these "exceptions," and Metro Council will have a very different makeup in a few years due to term limits.

Metro Council added Area 94 to the UGB in 2002 over strong objections from City of Portland. And as we already know, they are not required to ensure that UGB expansion areas can be served by a city.

My neighborhood is tired of fighting UGB battles -- even if the odds of approval are low, we can't afford to ignore these proposals.

Would the county invest effort in opposing these proposals? Do we want to give Metro the option of creating another Area 93 in an undesignated area?

So there are two situations to consider carefully. If there are either Urban Reserves or undesignated lands adjacent to the UGB, that are not adjacent to a city, there is potential for those areas to become a new Area 93 – a UGB expansion area without a city to provide services.

I don't know about you, but I'd prefer to avoid having another Area 93 to deal with.

Thank you, and I would be happy to answer any questions.

Sincerely,

Carol Chesarek

Carol Chesarek

#3

MULTNOMAH COUNTY BOARD OF COMMISSIONERS
PUBLIC TESTIMONY SIGN-UP

Please complete this form and return to the Board Clerk
*****This form is a public record*****

MEETING DATE: 1-21-10

SUBJECT: Urban/rural reserves

AGENDA NUMBER OR TOPIC: Public Comment

FOR: _____ AGAINST: _____ THE ABOVE AGENDA ITEM

NAME: Mollie Nelson

ADDRESS: 13512 NW Springville Lane

CITY/STATE/ZIP: Portland OR 97229

PHONE: DAYS: 503 297-1534 EVES: same

EMAIL: mollienelson@comcast.net FAX: (503) 297-3037

SPECIFIC ISSUE: UGB boundaries & issues

WRITTEN TESTIMONY: YES - submitted

IF YOU WISH TO ADDRESS THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Address the County Commissioners from the presenter table microphones. Please limit your comments to **3 minutes.**
3. State your name for the official record.
4. If written documentation is presented, please furnish one copy to the Board Clerk.

IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD:

1. Please complete this form and return to the Board Clerk.
2. Written testimony will be entered into the official record.

January 21, 2010

Chair Ted Wheeler and Commissioners
501 SE Hawthorne Boulevard
Portland, Oregon 97214

Topic: Urban and Reserves, and the cost of urban services

Dear Chair Wheeler and Commissioners,

Thank you for this opportunity to add to my December testimony about Reserves.

I would like to share a story about a UGB expansion proposal.

In 2007, Tom VanderZanden approached Friends of Forest Park (now Forest Park Conservancy) and Portland Audubon with a proposal. An 86 acre parcel of steeply sloped land adjacent to Audubon's sanctuary on Cornell Road had been gifted, years earlier, to the Oregon Parks Foundation. The donors made it clear that they wanted the land to be preserved as open space. But now the Foundation wanted to dissolve, and they needed to dispose of the property.

Somehow, Mr VanderZanden became involved, and he put together a proposal that went something like this: if the two organizations would support adding those 86 acres to the UGB, with protections for the most sensitive areas but allowing development of approximately 20 to 40 executive homes on the rest, each organization would receive a gift of $5 million out of the profits. That would have been a huge sum for either group.

Fortunately, both organizations decided that the harm to this fragile area wasn't worth the money. And in the end, Metro purchased the property through their Natural Areas Bond program.

I hope this helps you understand both the type of UGB expansion deals that can be proposed, and the kind of profit that's involved.

I also want to talk about the cost of urban services.

I have attached a Fact Sheet on the "Cost of Community Services" from the American Farmland Trust. A link to the Fact Sheet is included in my testimony.

http://www.farmlandinfo.org/documents/27757/COCS_09-2007.pdf

According to the Trust, farmlands and open space generate more in tax revenue than it costs to serve them. On average, farmland is a net benefit for municipal budgets, similar to that of commercial and industrial lands. But residential areas cost more to serve than they generate in revenue, so they must be subsidized.

The Fact Sheet includes a table showing the median cost of public services for each dollar of revenue:

Commercial and industrial:	$0.29
Working and open land:	$0.37
Residential:	$1.19

This county stopped providing services to urban unincorporated areas 25 years ago for some very, very good reasons. Cost was one of them. I don't know if we understand the cost of ongoing urban services for Area 93, especially for services that aren't funded directly by fees, like law enforcement and road maintenance.

The City of Portland has made it clear that they can't afford to serve new urban areas in the West Hills.

Can Multnomah County, with lower tax rates than the City and no recent experience providing urban services, afford to serve the West Hills if Portland can't?

I would prefer to see the county spend our limited revenues on things like the SUN program, not on services for new residential areas.

Thank you.

Mollie Nelson

13512 NW Springville Lane
Portland, OR 97229

FARMLAND INFORMATION CENTER

FACT SHEET

COST OF COMMUNITY SERVICES STUDIES

American Farmland Trust

FARMLAND INFORMATION CENTER
One Short Street, Suite 2
Northampton, MA 01060
(800) 370-4879
www.farmlandinfo.org

NATIONAL OFFICE
1200 18th Street, NW, Suite 800
Washington, DC 20036
(202) 331-7300
www.farmland.org

DESCRIPTION

Cost of Community Services (COCS) studies are a case study approach used to determine the fiscal contribution of existing local land uses. A subset of the much larger field of fiscal analysis, COCS studies have emerged as an inexpensive and reliable tool to measure direct fiscal relationships. Their particular niche is to evaluate working and open lands on equal ground with residential, commercial and industrial land uses.

COCS studies are a snapshot in time of costs versus revenues for each type of land use. They do not predict future costs or revenues or the impact of future growth. They do provide a baseline of current information to help local officials and citizens make informed land use and policy decisions.

METHODOLOGY

In a COCS study, researchers organize financial records to assign the cost of municipal services to working and open lands, as well as to residential, commercial and industrial development. Researchers meet with local sponsors to define the scope of the project and identify land use categories to study. For example, working lands may include farm, forest and/or ranch lands. Residential development includes all housing, including rentals, but if there is a migrant agricultural work force, temporary housing for these workers would be considered part of agricultural land use. Often in rural communities, commercial and industrial land uses are combined. COCS studies findings are displayed as a set of ratios that compare annual revenues to annual expenditures for a community's unique mix of land uses.

COCS studies involve three basic steps:

1. Collect data on local revenues and expenditures.
2. Group revenues and expenditures and allocate them to the community's major land use categories.
3. Analyze the data and calculate revenue-to-expenditure ratios for each land use category.

The process is straightforward, but ensuring reliable figures requires local oversight. The most complicated task is interpreting existing records to reflect COCS land use categories. Allocating revenues and expenses requires a significant amount of research, including extensive interviews with financial officers and public administrators.

HISTORY

Communities often evaluate the impact of growth on local budgets by conducting or commissioning fiscal impact analyses. Fiscal impact studies project public costs and revenues from different land development patterns. They generally show that residential development is a net fiscal loss for communities and recommend commercial and industrial development as a strategy to balance local budgets.

Rural towns and counties that would benefit from fiscal impact analysis may not have the expertise or resources to conduct a study. Also, fiscal impact analyses rarely consider the contribution of working and other open lands, which is very important to rural economies.

American Farmland Trust (AFT) developed COCS studies in the mid-1980s to provide communities with a straightforward and inexpensive way to measure the contribution of agricultural lands to the local tax base. Since then, COCS studies have been conducted in at least 128 communities in the United States.

FUNCTIONS & PURPOSES

Communities pay a high price for unplanned growth. Scattered development frequently causes traffic congestion, air and water pollution, loss of open space and increased demand for costly public services. This is why it is important for citizens and local leaders to understand the relationships between residential and commercial growth, agricultural land use, conservation and their community's bottom line.

© August 2007

The FARMLAND INFORMATION CENTER (FIC) is a clearinghouse for information about farmland protection and stewardship.
The FIC is a public/private partnership between the USDA Natural Resources Conservation Service and American Farmland Trust.

COST OF COMMUNITY SERVICES STUDIES

For additional information on farmland protection and stewardship contact the Farmland Information Center. The FIC offers a staffed answer service, online library, program monitoring, fact sheets and other educational materials.

www.farmlandinfo.org

(800) 370-4879

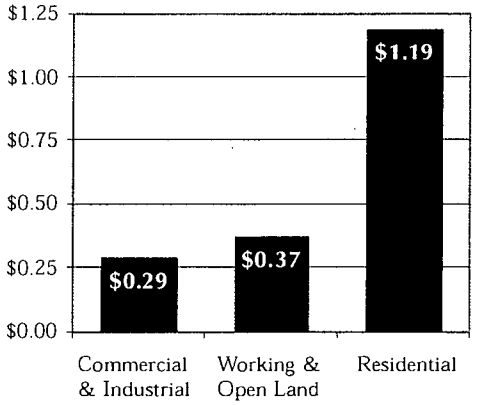
COCS studies help address three claims that are commonly made in rural or suburban communities facing growth pressures:

1. Open lands—including productive farms and forests—are an interim land use that should be developed to their "highest and best use."
2. Agricultural land gets an unfair tax break when it is assessed at its current use value for farming or ranching instead of at its potential use value for residential or commercial development.
3. Residential development will lower property taxes by increasing the tax base.

While it is true that an acre of land with a new house generates more total revenue than an acre of hay or corn, this tells us little about a community's bottom line. In areas where agriculture or forestry are major industries, it is especially important to consider the real property tax contribution of privately owned working lands. Working and other open lands may generate less revenue than residential, commercial or industrial properties, but they require little public infrastructure and few services.

COCS studies conducted over the last 20 years show working lands generate more public revenues than they receive back in public services. Their impact on community coffers is similar to that of other commercial and industrial land uses. On average, because residential land uses do not cover their costs, they must be subsidized by other community land uses. Converting agricultural land to residential land use should not be seen as a way to balance local budgets.

Median COCS Results



Median cost per dollar of revenue raised to provide public services to different land uses.

The findings of COCS studies are consistent with those of conventional fiscal impact analyses, which document the high cost of residential development and recommend commercial and industrial development to help balance local budgets. What is unique about COCS studies is that they show that agricultural land is similar to other commercial and industrial uses. In every community studied, farmland has generated a fiscal surplus to help offset the shortfall created by residential demand for public services. This is true even when the land is assessed at its current, agricultural use. However as more communities invest in agriculture this tendency may change. For example, if a community establishes a purchase of agricultural conservation easement program, working and open lands may generate a net negative.

Communities need reliable information to help them see the full picture of their land uses. COCS studies are an inexpensive way to evaluate the net contribution of working and open lands. They can help local leaders discard the notion that natural resources must be converted to other uses to ensure fiscal stability. They also dispel the myths that residential development leads to lower taxes, that differential assessment programs give landowners an "unfair" tax break and that farmland is an interim land use just waiting around for development.

One type of land use is not intrinsically better than another, and COCS studies are not meant to judge the overall public good or long-term merits of any land use or taxing structure. It is up to communities to balance goals such as maintaining affordable housing, creating jobs and conserving land. With good planning, these goals can complement rather than compete with each other. COCS studies give communities another tool to make decisions about their futures.

SUMMARY OF COST OF COMMUNITY SERVICES STUDIES, REVENUE-TO-EXPENDITURE RATIOS IN DOLLARS

Community	Residential including farm houses	Commercial & Industrial	Working & Open Land	Source
Colorado				
Custer County	1 : 1.16	1 : 0.71	1 : 0.54	Haggerty, 2000
Sagauche County	1 : 1.17	1 : 0.53	1 : 0.35	Dirt, Inc., 2001
Connecticut				
Bolton	1 : 1.05	1 : 0.23	1 : 0.50	Geisler, 1998
Durham	1 : 1.07	1 : 0.27	1 : 0.23	Southern New England Forest Consortium, 1995
Farmington	1 : 1.33	1 : 0.32	1 : 0.31	Southern New England Forest Consortium, 1995
Hebron	1 : 1.06	1 : 0.47	1 : 0.43	American Farmland Trust, 1986
Litchfield	1 : 1.11	1 : 0.34	1 : 0.34	Southern New England Forest Consortium, 1995
Pomfret	1 : 1.06	1 : 0.27	1 : 0.86	Southern New England Forest Consortium, 1995
Florida				
Leon County	1 : 1.39	1 : 0.36	1 : 0.42	Dorfman, 2004
Georgia				
Appling County	1 : 2.27	1 : 0.17	1 : 0.35	Dorfman, 2004
Athens-Clarke County	1 : 1.39	1 : 0.41	1 : 2.04	Dorfman, 2004
Brooks County	1 : 1.56	1 : 0.42	1 : 0.39	Dorfman, 2004
Carroll County	1 : 1.29	1 : 0.37	1 : 0.55	Dorfman and Black, 2002
Cherokee County	1 : 1.59	1 : 0.12	1 : 0.20	Dorfman, 2004
Colquitt County	1 : 1.28	1 : 0.45	1 : 0.80	Dorfman, 2004
Dooly County	1 : 2.04	1 : 0.50	1 : 0.27	Dorfman, 2004
Grady County	1 : 1.72	1 : 0.10	1 : 0.38	Dorfman, 2003
Hall County	1 : 1.25	1 : 0.66	1 : 0.22	Dorfman, 2004
Jones County	1 : 1.23	1 : 0.65	1 : 0.35	Dorfman, 2004
Miller County	1 : 1.54	1 : 0.52	1 : 0.53	Dorfman, 2004
Mitchell County	1 : 1.39	1 : 0.46	1 : 0.60	Dorfman, 2004
Thomas County	1 : 1.64	1 : 0.38	1 : 0.67	Dorfman, 2003
Union County	1 : 1.13	1 : 0.43	1 : 0.72	Dorfman and Lavigno, 2006
Idaho				
Canyon County	1 : 1.08	1 : 0.79	1 : 0.54	Hartmans and Meyer, 1997
Cassia County	1 : 1.19	1 : 0.87	1 : 0.41	Hartmans and Meyer, 1997
Kentucky				
Campbell County	1 : 1.21	1 : 0.30	1 : 0.38	American Farmland Trust, 2005
Kenton County	1 : 1.19	1 : 0.19	1 : 0.51	American Farmland Trust, 2005
Lexington-Fayette County	1 : 1.64	1 : 0.22	1 : 0.93	American Farmland Trust, 1999
Oldham County	1 : 1.05	1 : 0.29	1 : 0.44	American Farmland Trust, 2003
Shelby County	1 : 1.21	1 : 0.24	1 : 0.41	American Farmland Trust, 2005
Maine				
Bethel	1: 1.29	1 : 0.59	1 : 0.06	Good, 1994
Maryland				
Carroll County	1 : 1.15	1 : 0.48	1 : 0.45	Carroll County Dept. of Management & Budget, 1994
Cecil County	1 : 1.17	1 : 0.34	1 : 0.66	American Farmland Trust, 2001
Cecil County	1 : 1.12	1 : 0.28	1 : 0.37	Cecil County Office of Economic Development, 1994

SUMMARY OF COST OF COMMUNITY SERVICES STUDIES, REVENUE-TO-EXPENDITURE RATIOS IN DOLLARS

Community	Residential including farm houses	Commercial & Industrial	Working & Open Land	Source
Frederick County	1 : 1.14	1 : 0.50	1 : 0.53	American Farmland Trust, 1997
Harford County	1 : 1.11	1 : 0.40	1 : 0.91	American Farmland Trust, 2003
Kent County	1 : 1.05	1 : 0.64	1 : 0.42	American Farmland Trust, 2002
Wicomico County	1 : 1.21	1 : 0.33	1 : 0.96	American Farmland Trust, 2001
Massachusetts				
Agawam	1 : 1.05	1 : 0.44	1 : 0.31	American Farmland Trust, 1992
Becket	1 : 1.02	1 : 0.83	1 : 0.72	Southern New England Forest Consortium, 1995
Deerfield	1 : 1.16	1 : 0.38	1 : 0.29	American Farmland Trust, 1992
Franklin	1 : 1.02	1 : 0.58	1 : 0.40	Southern New England Forest Consortium, 1995
Gill	1 : 1.15	1 : 0.43	1 : 0.38	American Farmland Trust, 1992
Leverett	1 : 1.15	1 : 0.29	1 : 0.25	Southern New England Forest Consortium, 1995
Middleboro	1 : 1.08	1 : 0.47	1 : 0.70	American Farmland Trust, 2001
Southborough	1 : 1.03	1 : 0.26	1 : 0.45	Adams and Hines, 1997
Westford	1 : 1.15	1 : 0.53	1 : 0.39	Southern New England Forest Consortium, 1995
Williamstown	1 : 1.11	1 : 0.34	1 : 0.40	Hazler et al., 1992
Michigan				
Marshall Twp., Calhoun County	1 : 1.47	1 : 0.20	1 : 0.27	American Farmland Trust, 2001
Newton Twp., Calhoun County	1 : 1.20	1 : 0.25	1 : 0.24	American Farmland Trust, 2001
Scio Twp., Washtenaw County	1 : 1.40	1 : 0.28	1 : 0.62	University of Michigan, 1994
Minnesota				
Farmington	1 : 1.02	1 : 0.79	1 : 0.77	American Farmland Trust, 1994
Lake Elmo	1 : 1.07	1 : 0.20	1 : 0.27	American Farmland Trust, 1994
Independence	1 : 1.03	1 : 0.19	1 : 0.47	American Farmland Trust, 1994
Montana				
Carbon County	1 : 1.60	1 : 0.21	1 : 0.34	Prinzing, 1997
Gallatin County	1 : 1.45	1 : 0.16	1 : 0.25	Haggerty, 1996
Flathead County	1 : 1.23	1 : 0.26	1 : 0.34	Citizens for a Better Flathead, 1999
New Hampshire				
Deerfield	1 : 1.15	1 : 0.22	1 : 0.35	Auger, 1994
Dover	1 : 1.15	1 : 0.63	1 : 0.94	Kingsley, et al., 1993
Exeter	1 : 1.07	1 : 0.40	1 : 0.82	Niebling, 1997
Fremont	1 : 1.04	1 : 0.94	1 : 0.36	Auger, 1994
Groton	1 : 1.01	1 : 0.12	1 : 0.88	New Hampshire Wildlife Federation, 2001
Stratham	1 : 1.15	1 : 0.19	1 : 0.40	Auger, 1994
Lyme	1 : 1.05	1 : 0.28	1 : 0.23	Pickard, 2000
New Jersey				
Freehold Township	1 : 1.51	1 : 0.17	1 : 0.33	American Farmland Trust, 1998
Holmdel Township	1 : 1.38	1 : 0.21	1 : 0.66	American Farmland Trust, 1998
Middletown Township	1 : 1.14	1 : 0.34	1 : 0.36	American Farmland Trust, 1998
Upper Freehold Township	1 : 1.18	1 : 0.20	1 : 0.35	American Farmland Trust, 1998
Wall Township	1 : 1.28	1 : 0.30	1 : 0.54	American Farmland Trust, 1998

SUMMARY OF COST OF COMMUNITY SERVICES STUDIES, REVENUE-TO-EXPENDITURE RATIOS IN DOLLARS

Community	Residential including farm houses	Commercial & Industrial	Working & Open Land	Source
New York				
Amenia	1 : 1.23	1 : 0.25	1 : 0.17	Bucknall, 1989
Beekman	1 : 1.12	1 : 0.18	1 : 0.48	American Farmland Trust, 1989
Dix	1 : 1.51	1 : 0.27	1 : 0.31	Schuyler County League of Women Voters, 1993
Farmington	1 : 1.22	1 : 0.27	1 : 0.72	Kinsman et al., 1991
Fishkill	1 : 1.23	1 : 0.31	1 : 0.74	Bucknall, 1989
Hector	1 : 1.30	1 : 0.15	1 : 0.28	Schuyler County League of Women Voters, 1993
Kinderhook	1 : 1.05	1 : 0.21	1 : 0.17	Concerned Citizens of Kinderhook, 1996
Montour	1 : 1.50	1 : 0.28	1 : 0.29	Schuyler County League of Women Voters, 1992
Northeast	1 : 1.36	1 : 0.29	1 : 0.21	American Farmland Trust, 1989
Reading	1 : 1.88	1 : 0.26	1 : 0.32	Schuyler County League of Women Voters, 1992
Red Hook	1 : 1.11	1 : 0.20	1 : 0.22	Bucknall, 1989
North Carolina				
Alamance County	1 : 1.46	1 : 0.23	1 : 0.59	Renkow, 2006
Chatham County	1 : 1.14	1 : 0.33	1 : 0.58	Renkow, 2007
Orange County	1 : 1.31	1 : 0.24	1 : 0.72	Renkow, 2006
Union County	1 : 1.30	1 : 0.41	1 : 0.24	Dorfman, 2004
Wake County	1 : 1.54	1 : 0.18	1 : 0.49	Renkow, 2001
Ohio				
Butler County	1 : 1.12	1 : 0.45	1 : 0.49	American Farmland Trust, 2003
Clark County	1 : 1.11	1 : 0.38	1 : 0.30	American Farmland Trust, 2003
Knox County	1 : 1.05	1 : 0.38	1 : 0.29	American Farmland Trust, 2003
Madison Village, Lake County	1 : 1.67	1 : 0.20	1 : 0.38	American Farmland Trust, 1993
Madison Twp., Lake County	1 : 1.40	1 : 0.25	1 : 0.30	American Farmland Trust, 1993
Shalersville Township	1 : 1.58	1 : 0.17	1 : 0.31	Portage County Regional Planning Commission, 1997
Pennsylvania				
Allegheny Twp., Westmoreland County	1 : 1.06	1 : 0.14	1 : 0.13	Kelsey, 1997
Bedminster Twp., Bucks County	1 : 1.12	1 : 0.05	1 : 0.04	Kelsey, 1997
Bethel Twp., Lebanon County	1 : 1.08	1 : 0.17	1 : 0.06	Kelsey, 1992
Bingham Twp., Potter County	1 : 1.56	1 : 0.16	1 : 0.15	Kelsey, 1994
Buckingham Twp., Bucks County	1 : 1.04	1 : 0.15	1 : 0.08	Kelsey, 1996
Carroll Twp., Perry County	1 : 1.03	1 : 0.06	1 : 0.02	Kelsey, 1992
Hopewell Twp., York County	1 : 1.27	1 : 0.32	1 : 0.59	The South Central Assembly for Effective Governance, 2002
Maiden Creek Twp., Berks County	1 : 1.28	1 : 0.11	1 : 0.06	Kelsey, 1998
Richmond Twp., Berks County	1 : 1.24	1 : 0.09	1 : 0.04	Kelsey, 1998
Shrewsbury Twp., York County	1 : 1.22	1 : 0.15	1 : 0.17	The South Central Assembly for Effective Governance, 2002
Stewardson Twp., Potter County	1 : 2.11	1 : 0.23	1 : 0.31	Kelsey, 1994
Straban Twp., Adams County	1 : 1.10	1 : 0.16	1 : 0.06	Kelsey, 1992
Sweden Twp., Potter County	1 : 1.38	1 : 0.07	1 : 0.08	Kelsey, 1994
Rhode Island				
Hopkinton	1 : 1.08	1 : 0.31	1 : 0.31	Southern New England Forest Consortium, 1995
Little Compton	1 : 1.05	1 : 0.56	1 : 0.37	Southern New England Forest Consortium, 1995
West Greenwich	1 : 1.46	1 : 0.40	1 : 0.46	Southern New England Forest Consortium, 1995

SUMMARY OF COST OF COMMUNITY SERVICES STUDIES, REVENUE-TO-EXPENDITURE RATIOS IN DOLLARS

Community	Residential including farm houses	Commercial & Industrial	Working & Open Land	Source
Tennessee				
Blount County	1 : 1.23	1 : 0.25	1 : 0.41	American Farmland Trust, 2006
Robertson County	1 : 1.13	1 : 0.22	1 : 0.26	American Farmland Trust, 2006
Tipton County	1 : 1.07	1 : 0.32	1 : 0.57	American Farmland Trust, 2006
Texas				
Bandera County	1 : 1.10	1 : 0.26	1 : 0.26	American Farmland Trust, 2002
Bexar County	1 : 1.15	1 : 0.20	1 : 0.18	American Farmland Trust, 2004
Hays County	1 : 1.26	1 : 0.30	1 : 0.33	American Farmland Trust, 2000
Utah				
Cache County	1 : 1.27	1 : 0.25	1 : 0.57	Snyder and Ferguson, 1994
Sevier County	1 : 1.11	1 : 0.31	1 : 0.99	Snyder and Ferguson, 1994
Utah County	1 : 1.23	1 : 0.26	1 : 0.82	Snyder and Ferguson, 1994
Virginia				
Augusta County	1 : 1.22	1 : 0.20	1 : 0.80	Valley Conservation Council, 1997
Bedford County	1 : 1.07	1 : 0.40	1 : 0.25	American Farmland Trust, 2005
Clarke County	1 : 1.26	1 : 0.21	1 : 0.15	Piedmont Environmental Council, 1994
Culpepper County	1 : 1.22	1 : 0.41	1 : 0.32	American Farmland Trust, 2003
Frederick County	1 : 1.19	1 : 0.23	1 : 0.33	American Farmland Trust, 2003
Northampton County	1 : 1.13	1 : 0.97	1 : 0.23	American Farmland Trust, 1999
Washington				
Okanogan County	1 : 1.06	1 : 0.59	1 : 0.56	American Farmland Trust, 2007
Skagit County	1 : 1.25	1 : 0.30	1 : 0.51	American Farmland Trust, 1999
Wisconsin				
Dunn	1 : 1.06	1 : 0.29	1 : 0.18	Town of Dunn, 1994
Dunn	1 : 1.02	1 : 0.55	1 : 0.15	Wisconsin Land Use Research Program, 1999
Perry	1 : 1.20	1 : 1.04	1 : 0.41	Wisconsin Land Use Research Program, 1999
Westport	1 : 1.11	1 : 0.31	1 : 0.13	Wisconsin Land Use Research Program, 1999

Note: Some studies break out land uses into more than three distinct categories. For these studies, AFT requested data from the researcher and recalculated the final ratios for the land use categories listed in this table. The Okanogan County, Wash., study is unique in that it analyzed the fiscal contribution of tax-exempt state, federal and tribal lands.

American Farmland Trust's Farmland Information Center acts as a clearinghouse for information about Cost of Community Services studies. Inclusion in this table does not necessarily signify review or endorsement by American Farmland Trust.

Office of Chair Ted Wheeler
MULTNOMAH COUNTY OREGON
501 SE Hawthorne, Suite 600
Portland, Oregon 97214
(503) 988-3308 phone
(503) 988-3093 fax

MEMORANDUM

TO: Commissioner Deborah Kafoury
Commissioner Jeff Cogen
Commissioner Judy Shiprack
Commissioner Diane McKeel
County Attorney Agnes Sowle
Board Clerk Deb Bogstad

FROM: Barb Guthrie
Staff Assistant to Chair Wheeler

DATE: January 7, 2010

RE: January 19 Executive Session/Board Briefing and January 21 Board Meeting

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Due to a scheduled trip to Washington DC to lobby on behalf of Multnomah County, Chair Wheeler will not be in attendance for the above referenced meetings.

If you have any questions concerning this memo, please do not hesitate to call me.

Barb Guthrie

Multnomah County Oregon

2010 State & Federal Legislative Agenda

CHECK TO SEE IF THIS IS REVISED AGENDA

January 28, 2010

BOARD OF COUNTY COMMISSIONERS
501 SE HAWTHORNE, SUITE 600
PORTLAND, OREGON 97214
(503) 988-5895

TED WHEELER ● CHAIR
DEBORAH KAFOURY ● DISTRICT 1
JEFF COGEN ● DISTRICT 2
JUDY SHIPRACK ● DISTRICT 3
DIANE MCKEEL ● DISTRICT 4

COUNTY SPONSORED BILLS

Local Control. Support legislation to lift preemptions and other restrictions on local government, including the preemption on local tobacco taxes. In the 2009 Oregon legislative session, the House of Representatives passed HB 2616 to remove the state preemption on local government tobacco taxes. The legislature adjourned before the Senate could fully consider the bill.

Supervision of Forced Released Inmates. Seek legislation that provides supervisory authority over inmates released as the result of jail capacity limits. Multnomah County does not have the legal authority to supervise and impose conditions of release for these inmates.

Human Trafficking Hotline Info Posting. Seek legislation that encourages retail establishments that sell alcohol to voluntarily post information on the national hotline for human trafficking. Public awareness of sex trafficking of minors is relatively low despite recent a nationwide law enforcement operation. The posting of hotline information can aid in reducing human trafficking. Other states have taken such steps in the effort to stop this exploitation of minors.

Cancellation of Taxes on Low-Value Manufactured Homes. Seek legislation that permits the cancellation of personal property taxes for manufactured homes whose assessed values are less than $15,000. Multnomah County sees very little return on investment with these accounts because the cost of billing, servicing and collecting these accounts is high compared with revenue received. These homeowners are also generally very poor and unable to pay.

PRIORITIES

State 2009-11 Budget. Support efforts to protect state funded public safety and human service programs. The March 2010 state revenue forecast and the outcome of Measures 66 and 67 will determine the legislative action the Oregon Legislature undertakes. Multnomah County will respond accordingly to support or oppose legislative actions that promote the county's interests.

Wapato Jail. Seek a partnership with the Department of Corrections to utilize the Wapato Jail facility. The 525-bed facility offers many options that can meet county and state public safety needs.

Elections. Support legislation that removes the requirement to create a new voter precinct as the result of non-contiguous land being annexed by cities. The requirement places an administrative burden that is costly to Multnomah County.

Mental Health. Monitor the progress and outcomes of SB 5529's budget notes on mental health integration and psychiatric acute care funds. Support efforts that expand resources for both subacute and acute psychiatric care. Monitor reform efforts in the state's mental health system. Support efforts to ensure that uninsured populations are cared for and cost-effectively managed by the county. Oppose legislation that undermines Multnomah County's mental health system.

Health Privacy. Support legislation that permits the exchange of patient mental health information between health providers and mental health organizations as it pertains to state efforts in integrating physical and mental health care. Multnomah County mental health system is a significant provider of mental health services. How patient information is used and shared is

important to the well being of the individual and an important responsibility for physical and mental health care providers.

Commercial Surety Bonds Industry. Oppose legislation that reinstitutes the bail bonds industry in Oregon. A bail bonds system would undermine Multnomah County's Pretrial Release Services system and introduce the potential for abuse without any guarantee for improving failure to appear rates.

LOCAL CONTROL

ISSUE: *State preemptions and other restrictions on local government discourage creative solutions to local problems and undermine local authority. Multnomah County needs to have all the tools in its toolbox to meet the needs of its residents.*

POSITION: Support lifting state preemptions and oppose any new state preemption that reduces local authority or local revenue sources.

STATE MANDATES

ISSUE: *Multnomah County is bearing the brunt of underfunded services required by the State in corrections, health and human services, and other areas including court facilities. As a result, Multnomah County has supplemented what it receives from the state with County General Funds in order to meet its statutory obligations. Given the economic situation and growing community needs, the County General Fund is not able to sustain these services.*

POSITION: Support adequate funding to cover actual costs of providing state required services and oppose efforts that underfund these services.

MENTAL HEALTH SYSTEM

ISSUE: *First responders that treat persons suffering a mental health crisis do not have a viable and cost effective alternative to hospital emergency rooms or the County jail to take these persons for proper treatment. This means improper care and added expense to emergency responders, local area hospitals, and the jail system. The lack of a sub-acute assessment and treatment facility in Multnomah County is a huge gap in the mental health system.*

POSITION: Support efforts that expand resources for both subacute and acute psychiatric care. Monitor reform efforts in the state's mental health system to ensure that uninsured populations are cared for and cost-effectively managed for the county.

PUBLIC SAFETY

ISSUE: *Multnomah County is a very important part of the state's public safety system due to it being the most populated county in the state with the most active law enforcement, judicial, and parole and probation systems in the state. Multnomah County has proven that local knowledge combined with evidence based practices is a national model of success.*

POSITION: Support legislation and state partnerships that provide the best results in public safety and maximize resources in Multnomah County. This includes facilitating state partnerships in juvenile parole and probation services and with the county's Wapato Jail facility.

OREGON HEALTH PLAN

ISSUE: *During the 2002 recession, the state drastically reduced the Oregon Health Plan Standard population to cut costs. Many thousands of Oregonians lost coverage. The consequences have dramatically driven up costs for the county's health clinics and for hospital emergency rooms. Reductions in enrollment have resulted in a loss of matching state and federal dollars to Multnomah County to pay for residential treatment services.*

POSITION: Support efforts to increase the Oregon Health Plan Standard population. Greater coverage reduces the out-of-pocket expenses for Multnomah County's health clinics.

PROPERTY TAX LIMITATION

ISSUE: *Measure 50 created a permanent structural deficit for local government in Oregon. Multnomah County cannot finance public services with revenues generated by a property tax rate that grows slower than real market inflation. Measure 50 property tax system has created inequity for homeowners with equal valued homes but taxed unequally.*

POSITION: Support changes to the Oregon Constitution that make Oregon's property tax system more equitable for property owners and more in sync with real market conditions.

SUSTAINABILITY

ISSUE: *Multnomah County strives to be more environmentally friendly and energy conscious in its operations. As a government that serves the state's most populated county, there is enormous opportunity to make a difference in promoting the local economy, reducing pollution, and conserving natural resources.*

POSITION: Support legislation that makes it easier for Multnomah County and its households to adopt environmental friendly practices in day to day operations.

TRANSPORTATION

ISSUE: *Multnomah County is responsible for the maintenance of six Willamette River bridges and nearly 300 miles of roads. The Oregon Jobs and Transportation Act provided the County with needed funding. The State will need to continue working on sustainable revenues for the future that will provide maintenance to the existing system as well as continued growth.*

POSITION: Support a fair and reliable system of revenue sources for maintaining the existing transportation system as well as stewarding sustainable growth. Protect the County's revenue sources by advocating for a hold harmless provision for Bridge funding.

PUBLIC INFRASTRUCTURE

SELLWOOD BRIDGE

The Sellwood Bridge is the busiest two-lane bridge in Oregon with over 30,000 daily vehicle crossing. The 90-year old bridge rates very low in federal safety standards as a result of its age and the geological movement of the West Hills buckling the structure. Weight restrictions have been in place since 2004, affecting freight trucks and buses as well as the local economy. Multnomah County has completed the Sellwood Bridge Project DEIS and selected a Locally Preferred Alternative in February 2009. Construction is scheduled to begin in 2012. The cost is estimated at $330 million in 2014 dollars.

POSITION: Multnomah County seeks $5 million in FY2011 to conduct the Final Design and right-of-way acquisition for the Sellwood Bridge project. The county is seeking $40 million in the Surface Transportation Reauthorization Act to complete the project.

BEAVER CREEK CULVERTS

The lower Beaver Creek in Multnomah County is critical habitat to federally endangered species including Lower Columbia River Chinook Salmon and Steelhead Trout, and candidate species including Lower Columbia River Coho Salmon. The existing waterway and wetland are neither conducive to fish passage nor other wildlife. Replacing the Beaver Creek Culverts will improve the habit and enhance fish passage.

POSITION: Multnomah County seeks $6 million for the replacement of the 3 downstream-most culverts, (Troutdale Rd., Stark St., and Cochran Rd.) with larger culverts or bridges, opening 4.6 miles of Beaver Creek to fish passage. Included is restoration of natural substrate under bridges and culverts; stabilization of stream bed to ensure no head-cutting occurs; removal of non-native exotic (plant) species and replant with native species along bank; and, enhance a forested wetland adjacent to the Stark St. crossing by removal of non-native species with native species. This would improve habitat for many wildlife species including neotropical migratory birds that use riparian habitat for nesting and cover, small mammals that use riparian areas as migration corridors, and native amphibians and reptiles that would utilize wetland habitats.

PUBLIC SAFETY

FINANCIAL AND ELDER ABUSE PROSECUTION PROJECT

While seniors comprise just 13 percent of the general population; they possess 50 percent of the total wealth, making them disproportionately targeted for financial fraud and abuse. As seniors live longer, they become increasingly vulnerable to financial manipulation, abuse and neglect. Financial abuse is the fastest growing form of abuse. It is estimated that for every one case of elder abuse, neglect, exploitation, or self-neglect reported to authorities, approximately five go

unreported. Between 2007 and 2009, Multnomah County had 1361 cases of financial elder abuse.

POSITION: Multnomah County seeks $595,000 for investigating financial fraud, prosecuting perpetrators, gathering forensic data, providing support services to victims, educating the public and senior care providers, providing forensic nursing, coordinating services among agencies; and providing enhanced referral services.

HEALTH/HUMAN SERVICES

EAST COUNTY SCHOOL BASED HEALTH CLINIC

By working in partnership with schools, families, healthcare providers, and community agencies, the Multnomah County School Based Health Clinic(SBHC) Program is able to provide health care for the county's school-age youth in the most readily accessible locations. This results in the early identification and intervention of health issues and the reduction of barriers to care. SBHCs play a major role in the local health care delivery system's ability to curb high-risk behaviors and thus foster academic success for the county's youth. Expansion of these services will support better access to SBHC services to the youth of East County as poverty as shifted in this area.

POSITION: Multnomah County seeks $350,000 to for capital costs for a health clinic that would serve local income school children with the Centennial and Gresham/Barlow school districts.

GATEKEEPER PROJECT

The Gatekeeper model is a national best practice program that identifies at-risk older adults and people with disabilities living in our community and links them to critical social and health services. The program trains volunteers to identify signs and symptoms such as confusion, depression, poor health, functional disability, financial exploitation or unsafe living conditions that may indicate vulnerable adults needing assistance. Volunteers could be meter readers, bank tellers, letter carriers and others that come into contact with older adults or people with disabilities in their daily work activities.

POSITION: Multnomah County seeks $100,000 to recruit and train 840 volunteer Gatekeepers and 24 Gatekeeper volunteer trainers.

SUPPORTED APPROPRIATION REQUESTS FROM COUNTY PARTNERS

LUKE-DORF MENTAL HEALTH SUPPORTIVE HOUSING

The single greatest impediment to diverting many mentally ill persons away from the criminal justice system is the absence of housing resources supported housing in particular. Supported housing, and the use of specialized courts like Community and Mental Health Court, focuses on the underlying issues that result in criminal justice involvement. For a variety of reasons, mentally ill persons with criminal backgrounds are excluded or unwelcome in many types of public housing. While those barriers are surmountable over the long term, they present a formidable challenge when attempting to expedite a speedy diversion for a homeless person from the criminal justice system. A supported housing resource dedicated to specialized courts such as Community Court and Mental Health Court would allow Multnomah County to place appropriate persons in a managed environment that provides mental health services while permanent living and treatment alternatives are arranged. Without an interim intervention like this, homeless mentally ill persons will have little opportunity for a successful court diversion.

POSITION: Multnomah County supports Luke-Dorf's request for $2 million in capital funds to

construct housing in the county.

HUMAN TRAFFICKING VICTIMS SHELTER

The biggest obstacle to getting victims of trafficking and forced prostitution off of the streets is a lack of a safe facility where victims can sleep, get physical and mental treatment, and simply be comfortable. The only options currently available are placing the child in foster care or putting them in jail. By providing the victims with a secure and comfortable environment the victims will be given access to the resources and supports they need to provide for themselves away from the predators that control them with fear and intimidation. Not only will this help those wishing to exit the sex trade, but it will also help law enforcement and the District Attorney's Office achieve more convictions. While victims may initially be willing to testify against their abusers, when they have no safe place to stay they nearly always return to the same pimps and thugs who abuse them. This shelter will provide them with the safe bed and moral support that will encourage them to stay under supervision and make the difficult decision to testify against their pimp. Without such a facility, we have very little chance of ending the practice of human trafficking and forced prostitution in our region.

POSITION: Multnomah County will support efforts undertaken by a service provider (to be determined) to seek federal capital funds if needed for building a shelter to serve victims of human trafficking.

HEALTH/HUMAN SERVICES

AFFORDABLE HEALTH CARE FOR AMERICA ACT/ PATIENT PROTECTION & AFFORDABLE CARE ACT (HR. 3962/HR. 3590)

Experts from across the political spectrum agree that America's health system is broken and unsustainable in its present configuration. Families in Multnomah County are experiencing this crisis right now, confronting the high cost of health care that threatens their financial stability, leaves them exposed to higher premiums and deductibles, and puts them at risk for a possible loss of health insurance. It costs Multnomah County $61.5 million in county general funds to meet the health needs of its residents including $19 million for public health, $14 million for indigent care, $13 million for corrections health, $1.5 million for local Medicaid match, and $14 million for mental health and addictions obligations.

POSITION: Multnomah County supports the inclusion of the following provisions in the federal effort to reform health care.

1) Inclusion of new federal designation: "Federally Qualified Behavioral Healthcare Centers"
2) Simplification of Medicaid coverage for nurse home visitations
3) Public Health Investment Fund/Prevention & Public Health Fund
4) Reimbursement of jail for health care costs for pre-adjudicated population eligible for Medicaid
5) Extension of the FMAP increase from the ARRA
6) Clarification that Medicaid does not prohibit state coverage of therapeutic foster care

FULL SERVICE COMMUNITY SCHOOLS ACT (HR. 3545 – Co-sponsor: Blumenauer)

Multnomah County's SUN schools are an active and robust community school system of 58 schools and 6 regional service centers that links academic support, early childhood programs, parent involvement and education, anti-poverty assistance, health care, mental health and addictions treatment in a culturally suitable environment for the county's diverse school population.

POSITION: Multnomah County would seek federal grants authorized in HR 3534 to strengthen its community school system.

RESTORING THE PARTNERSHIP FOR COUNTY HEALTH CARE COSTS ACT OF 2009 (HR. 2009)

An estimated 21 percent of persons booked in Multnomah County's jails in pre-trial status have private or public health insurance coverage, i.e. Oregon Health Plan, Medicaid, Medicare, or SSI. Health care costs in county jails could be reimbursed, providing much needed relief for the county's fiscal health.

POSITION: Multnomah County supports the passage of this legislation with an amendment that requires private health insurance to reimburse for health care provided by county jail staff.

PUBLIC SAFETY

JUVENILE JUSTICE DELINQUENCY PREVENTION ACT OF 2009 (S. 678)
Multnomah County juvenile justice program is a national model of successful implementation of the goals of the Juvenile Justice Delinquency Prevention Act of 1974. Most importantly, the county has reduced re-offense rates and delinquency of juveniles in its custody using evidence-based practices that prioritize safety. The county's success is in jeopardy because the Act has not been reauthorized. The federal leadership responsible for this success has declined considerably.

POSITION: Multnomah County supports the reauthorization of the Act, specifically raising the authorization levels for Title V grants. Since 2002, Multnomah County has lost over $900,000 in federal juvenile justice funding that came to the county. The impact of these federal cuts has meant *fewer juvenile prevention and intervention services to young people and their families.* In 2002, Multnomah County served 1,200 young people a year in its juvenile justice system. Today it is down to 600 young people despite the need.

YOUTH PROMISE ACT OF 2009 (S. 435/HR. 1064)
Multnomah County sets the national standard on incorporating evidence-based practices to reduce juvenile delinquency and criminal street gang activity. The National Association of Counties, the National Conference of State Legislatures, and US Dept. of Justice have heralded the county's success. Close to 73% of youth served by the county's gang intervention services complete their programs. Of those served, 76% do not recidivate while in the program and 74% do not recidivate one year after completing the program. The Youth Promise Act will support evidenced based prevention and intervention strategies proposed by local councils with federal grants. Grants provided under the act could help retain juvenile justice probation officers.

POSITION: Multnomah County supports the passage of the Youth Promise Act. The Act provides for a thorough evaluation of gang and youth violence prevention programs, including analyses of cost savings to society yielded by investing in prevention and intervention rather than in more costly prosecution and incarceration approaches.

RECIDIVISIM REDUCTION ACT of 2009 (HR. 2829)
Key federal benefits are regularly suspended or terminated upon incarceration and take considerable time to be reinstated after an individual is released. Without the health coverage and other benefits, many newly released individuals cannot fully focus on securing gainful employment and developing a supportive home life. Without these benefits, counties and states end up paying the "full freight" of any health care, disability and other support for people under the supervision of the county's parole and probation, and juvenile justice department as they wind through the system.

POSITION: Multnomah County supports the Recidivism Reduction Act of 2009. HR. 2829 will ensure prompt access to supplemental security income, Social Security disability, and Medicaid benefits for persons released from certain public institutions (such as a jail, or a juvenile detention center).

NATIONAL CRIMINAL JUSTICE COMMISSION ACT OF 2009 (S. 714)
With the highest incarceration rate in the world, overcrowded prisons, growing gang violence, lack of focus in reintegrating ex-convicts who have paid their debts to society, the criminal justice system in the United States is in great need of repair. Prison spending continues to outpace education and human services in many states. Communities throughout the country would benefit tremendously from a comprehensive review of policies and practices that produces meaning reform.

POSITION: Multnomah County supports the passage of the National Criminal Justice Commission Act. The Act will create commission charged with a top-to-bottom review of the criminal justice system and propose recommendations designed to reduce the overall incarceration rate; to improve drug policy; to improve mental illness treatments, to improve prison management, and to establish a system for reintegrating ex-offenders.

SECOND CHANCE ACT OF 2007 (HR. 1593/S. 1060)
When the Congress passed and the President signed the Second Chance Act of 2007, the law provided an important source of federal funds for critical re-entry services such as family-based substance abuse treatment, education programs in jail facilities, job training, mentoring and for program evaluation. Unfortunately, the global recession of 2008 have had a severe impact on local governments' ability meeting the federal match requirement. Many parole and probation services have been reduced, including employment, education, housing, and treatment services.
POSTION: Multnomah County supports removing the local match requirement as a result of the recession's recession impact on the county's budget.

TRAFFICKING DETERRANCE & VICTIMS SUPPORT ACT OF 2010
Human trafficking of minors for prostitution is growing problem in Multnomah County and in the nation. In order to effectively stop human trafficking in the United States, a comprehensive approach that includes law enforcement and prosecution, victims' assistance, counseling, public outreach, shelters for victims, and investigations is needed.

POSITION: Multnomah County supports the effort to introduce legislation that authorizes a pilot project of six block grants to provide a comprehensive approach to addressing human trafficking. The grants would be administered by the Office Justice Programs in the Byrner-JAG grants.

LAND USE/TRANSPORTATION

SURFACE TRANSPORTATION REAUTHORIZATION ACT
The reauthorization of the federal surface transportation act is the critical final piece of the Sellwood Bridge Project's funding plan. Multnomah County has successfully pulled together diverse sources of funds to complete the reconstruction of the bridge. The plan includes $30 million from ODOT, $100 million from the City of Portland, and $127 million in new county vehicle registration fees from Multnomah County. Clackamas County is considering a vehicle registration fee that would contribute $22 million to the replacement of the Sellwood Bridge.

POSITION: Multnomah County requests an authorization of $40 million to complete the reconstruction of the Sellwood Bridge.

HEALTHY PLACES ACT OF 2006 (S. 2506/HR. 5088)
The Portland metropolitan region is undertaking a massive project in rebuilding the Interstate 5 bridge between Oregon and Washington, as known as the Columbia River Crossing. The volume of pollution from vehicles crossing the I-5 bridge 24/7 greatly affects the health of the many neighborhoods on both sides of the river. Multnomah County's Health Department took the initiative to submit its assessment of the health impacts during the development of the DEIS. The assessment was an invaluable tool for decision-makers, transportation planners, and the public in understanding the health effects of each bridge options.

POSITION: Multnomah County supports a federal grant program that encourages local public health agencies to conduct health impact assessments for transportation projects.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 2010-010

Approving an Exemption to Increase the Contract Amount with Gibson Builders LLC for Inverness Jail Dorm Shower Water Proofing Project

The Multnomah County Board of Commissioners Finds:

a. The Board is acting as the Multnomah County Public Contract Review Board (PCRB) to review, pursuant to PCRB Rule 49-0910, an exemption request from the Department of County Management, Facilities and Property Management Division, to increase the amount of the contract with Gibson Builders beyond the 33 percent limit for Multnomah County Inverness Jail Dorm Showers Water Proofing Project.

b. The County awarded a contract with Gibson Builders for the Inverness Jail Dorm Shower Improvements project CP08.09.45 to repair leaking showers. The original plan called for resurfacing; however, material defects in the original construction were discovered after the first shower was demolished. These defects, which were hidden and unanticipated, include missing pan liners and no vapor barrier installed under the original concrete slab. The proposed solution to rectify this condition is to repair only the most critical showers at this time. A follow-on project will be developed to repair the remaining showers.

c. The cost to repair all 18 showers is estimated at $733,000. The original contract with Gibson Builders to waterproof all 18 showers was $177,097, which only repairs 4.5 showers with the additional work. The revised contract cost to repair the 10 most critical showers is $408,313, representing a 231 percent increase in the contract price. Because the Board approved budget reallocation request FPM 10-01 in October, adequate funding exists in the program budget to perform the additional work.

d. The additional work is within the general scope of the original contract as defined by PCRB Rule 49-0910(2) because it is logically related to the contract work. Prudent contract management and construction practices dictate that the additional work ought to be performed in conjunction with the original contract work; the additional work is located at the same site as the original contract work; and the contract objectively establishes the price for the additional work. The contractor was selected through a formal competitive process therefore it is not likely that the field of competition will be affected by the proposed contract amendment.

e. This exemption request is in accord with the requirements of PCRB Rule 49-0910.

The Multnomah County Board of Commissioners Resolves:

1. The exemption to increase the amount of Contract No. 4600007855 with Gibson Builders LLC to $408,313 for the Inverness Jail Dorm Shower Improvement Project is approved.

ADOPTED this 21st day of January, 2010.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
John Thomas, Deputy County Attorney

SUBMITTED BY:
Mindy Harris, DCM Director

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 2010-007

Adopting Revised Multnomah County Public Contract Review Board Rules Effective January 21, 2010

The Multnomah County Board of Commissioners Finds:

a. The most recent version of the Multnomah County Public Contract Review Board (PCRB) Rules was adopted effective May 1, 2009. The PCRB Rules are based on the Attorney General Model Contract Rules (AG Model Rules). The AG Model Rules are, in turn, are based on ORS Chapters 279A, 279B and 279C.

b. Central Procurement and Contract Administration Policy Memorandum P104 requires a periodic review of the PCRB Rules to incorporate any required changes that have occurred and ensure the document reflect current and optimal business practice.

c. The proposed rules will become effective on January 21, 2010.

d. It is in the best interests of Multnomah County to adopt the proposed revision to the PCRB rules in lieu of the Attorney General Model Rules.

The Multnomah County Board of Commissioners Resolves:

1. The Board adopts the rules attached as Exhibit 1 as the Public Contract Review Board Rules for Multnomah County effective January 21, 2010. The Attorney General Model Rules provided for in ORS 279A.065 do not apply to Multnomah County.

ADOPTED this 21st day of January 2010.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
John S. Thomas, Deputy County Attorney

SUBMITTED BY:
Brian R. Smith, Acting Purchasing Manager, CPCA

MULTNOMAH COUNTY
PUBLIC CONTRACT REVIEW BOARD
RULES

Effective January 21, 2010

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DIVISION 5 INTRODUCTION – SOURCE OF RULES – EFFECTIVE DATE

These Rules comprise a comprehensive revision of the Multnomah County Public Contract Review Board Rules. The original rules were first adopted April 8, 1976 and were most recently revised and effective on May 1, 2009.

These Rules implement ORS Chapters 279 and Chapters 279A, 279B and 279C, the Public Contracting Code, referred to in this document as "the Code."

- Division 10, Definitions, was compiled from definitions from Model Rules Divisions 46, 47, 48 and 49 with additions from the former county rules and from the Department of Administrative Services ("DAS") Rules ("DAS Rules").
- Divisions 15 and 20 apply to all contracts including personal services.
- Division 46 implements ORS chapter 279A, General Provisions. Division 46 applies to all public contracting conducted under these Rules
- Division 47 implements chapter 279B, Public Procurements. Division 47 applies to Procurement of Goods and Trade Services.
- Divisions 48 and 49 implement ORS chapter 279C, Public Improvements and Related Contracts; Division 48 describes procedures for Procurement of architectural, engineering, land surveying and related services contracts; Division 49 describes procedures for Procurement of construction services.
- Division 55 implements ORS Chapter 279 relating to purchases from Qualified Rehabilitation Facilities. Division 55 is based on DAS Rules and OAR 125-055-0005 et seq.
- Division 60 implements the County's policy to provide opportunities for all segments of the business population and to prohibit discrimination. Division 60 applies to all contracts including personal services contracts.

The primary source documents for these Rules are the Code, the Oregon Attorney General's Model Public Contract Rules (Divisions 46, 47, 48 and 49), the DAS Rules and the former Multnomah County Public Contract Review Board Rules dated October 10, 2002 (former county rules). The Model Rules and the DAS Rules were in some cases revised to meet the particular requirements of Multnomah County. These Rules focus on competitive Procurement procedures intended to further the State of Oregon policy goals for a sound and responsive public contracting system that: 1) uses procurement practices that are a simple, clear and modern reflection of the market place and industry standards; 2) instills public confidence; 3) promotes efficient use of state and local government resources; 4) clearly identifies rules and policies that implement each of the legislatively mandated socioeconomic programs that overlay public contracting and accompany the expenditure of public funds; 5) allows impartial and open competition; and 6) provides a public contracting structure that takes 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.

DIVISION 10 DEFINITIONS

10-0000 Definitions

Addendum or Addenda. An written or electronic addition or deletion to, a material change in, or general interest explanation of the Solicitation Document.

Advantageous. In the County's best interests, as assessed according to the judgment of the County.

Award. As the context requires, either the act or occurrence of the identification of the Person with whom the County will enter into a Contract following the resolution of any protest of the County's selection of that Person, and the completion of all Contract Negotiations.

Affected Person or Affected Offeror. A Person whose ability to participate in a Procurement is adversely affected by a decision of the County.

Bid. A response to an Invitation to Bid.

Bidder. A Person who submits a Bid in response to an Invitation to Bid.

Board. The Multnomah County Public Contract Review Board.

Chair. The Chair of the Board of County Commissioners for Multnomah County.

Code. The Public Contracting Code, ORS chapters 279A, 279B and 279C.

CPCA. Central Procurement and Contract Administration.

CPCA Manager. The Central Procurement and Contract Administration Manager whose duties are described in Division 15 or that person's designee.

CPCA MINT Site. A site maintained by CPCA on the MINT (County intranet site) for use by County employees.

CPCA Website. The Internet World Wide Web site maintained by CPCA.

Closing. The date and time announced in the Solicitation Document as the deadline for submitting Offers.

Competitive Bidding. A price-based selection process that involves an advertised public notice, issuance of a Written Solicitation Document inviting interested Persons to submit Written, Signed, and sealed Bids, that are received by the County and publicly opened at the designated time and place, and a Contract awarded (if one is awarded) to the lowest Responsive, Responsible Bidder.

Competitive Range. The Proposers with whom the Department will conduct Discussions or negotiate if the Department intends to conduct Discussions or Negotiations in accordance with Rule 47-0262 or Rule 49-0650. The Competitive Range shall be stated in the Solicitation Document, but will be decreased if the number of Proposers that submit Proposals is less than the specified number, or may be increased by the Department in accordance with Rule 47-0262 or Rule 49-0650.

Conduct Disqualification. A Disqualification pursuant to ORS 279C.440 and Rule 49-0370.

Contract. A sale or other disposal, or a purchase, lease, rental or other acquisition of personal property, services other than Personal Services, public improvements, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Contract" does not include grants. This term is used interchangeably with the term "Public Contract."

Contractor. The Person with whom the County enters into a Contract.

Contract Price. As the context requires, (i) the maximum payments that the County will make under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract, (ii) the maximum not-to-exceed amount of payments specified in the Contract, or (iii) the unit prices for Goods or Services set forth in the Contract.

Days. Calendar days unless otherwise specified by these Rules.

Disadvantaged Business Enterprise or DBE. A business concern described in ORS 200.005(1) and certified as such with the State of Oregon pursuant to ORS 200.055.

Department. A County Department or any unit within a Department, which has responsibility for the purchase of Goods or services for the County.

Descriptive Literature. The Offeror's materials submitted to provide information concerning the products available in response to the Solicitation Document.

Disabled Individual. A person who has a physical or mental impairment (a residual, limiting condition resulting from an injury, disease or congenital defect) that so limits the person's functional capabilities (such as mobility, communication, self-care, self-direction, work tolerance or work skills) that the individual is not able to engage in normal competitive employment over an extended period of time and, as a result, must rely on the provision of specialized employment opportunities by qualified nonprofit agencies for Disabled Individuals.

Discussions. To exchange information, compare views, take counsel, and communicate with another for the purposes of achieving clarification and mutual understanding of an Offer.

Disqualification. The preclusion of a Person from contracting with the County after notice and hearing pursuant to Rule 46-0210 or ORS 279C.440 and Rule 49-0370.

Electronic Advertisement. Notice of a request for Offers, request for Quotes, request for information or other document inviting participation in County Procurements available over the Internet via the World Wide Web or some other Internet protocol. An Electronic Advertisement may or may not include a Solicitation Document.

Electronic Offer. A response to a request for Quotes submitted via e-mail.

Emergency. Circumstances that could not have been reasonably foreseen which create a substantial risk of loss, damage, interruption of services or threat to the public health or safety and which require prompt execution of a Contract to remedy the condition.

Emerging Small Business or ESB. A business concern described in ORS 200.005(3) and 200.005(4) and certified as such with the State of Oregon pursuant to ORS 200.055.

Exemption. A process under Rules 49-0600 to 49-0690 that permits an Alternative Contracting Method to be used in lieu of Competitive Bidding. An Exemption may address a specific Contract, or a class or of Contracts.

Facsimile. A document that has been transmitted by and received by a facsimile machine.

Foreign Contractor. A Contractor that is not domiciled in or registered to do business in the State of Oregon. See Rule 49-0490.

Goods. Supplies, equipment, or materials, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto.

Good Cause. When capitalized under these Rules, Good Cause means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the County. The Department shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. A Department will have Good Cause to specify otherwise under the following circumstances:

(1) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(2) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated;

(3) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(4) Any other circumstances in which County's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the County's practical need for the highest prevalent standard in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the Contract.

Grant. Grant has the meaning set forth in 279A.010(k)(A)

Informal Quote. A Quote made in response to a Solicitation under Rule 49-0160.

Intermediate Procurement. A sourcing method authorized by Rule 47-0270.

Invitation to Bid or ITB. The Solicitation document inviting competitive, Written, Signed and sealed Offers from prospective Contractors in which Specification, price and delivery (or project completion) are the predominant Award criteria.

Life Cycle Costing. A Method of determining the cost of a product for its estimated useful life, including disposal.

Living Wage. A minimum wage required to be paid on janitorial, security and food services pursuant to Resolution 98-165.

Minority Business Enterprise or MBE. A minority business concern described in ORS 200.005(5) and certified as such with the State of Oregon pursuant to ORS 200.055.

Minority Individual. A person described in ORS 200.005(4).

Negotiations. To compare views, take counsel, and communicate with another so as to arrive at a voluntary, mutual agreement about a matter.

Nonresident Bidder. A Bidder described in ORS 279A.120(1)(a).

Offer. A Written Bid, Proposal or Quote offering to provide Goods or Services in response to a Solicitation.

Offeror. A Person submitting a Bid, Proposal or Quote as applicable; a Bidder or a Proposer.

Opening. The date, time and place announced in the Solicitation Document for the public Opening of Written sealed Offers.

Person. An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

Personal Services. Services as defined in Rule 47-0000(2).

Prevailing Wage Rate. When used in these Rules means the "prevailing rate of wage" defined in ORS 279C.800(3).

Price Agreement. A Public Contract for the Procurement of Supplies and Services at a set price with: (a) No guarantee of a minimum or maximum purchase; or (b) An initial order or minimum purchase combined with a continuing Contractor obligation to provide Supplies and Services in which the County does not guarantee a minimum or maximum additional purchase.

Procurement. The act of purchasing, leasing, renting or otherwise acquiring Goods or services. As used in Division 49 it also means the act contracting for a Public Improvement. "Procurement" includes each function and procedure undertaken or required to be undertaken to enter into a Public Contract, administer a Public Contract and obtain the performance of a Public Contract under the Public contracting Code.

Procurement File. The file required to be maintained under Rule 46-0490.

Product Sample. A representative specimen of the item offered by the Offeror in response to the Solicitation Document. Unless otherwise provided in the Solicitation Document, the Product Sample shall be the exact product or a representative portion of that product offered by the Offeror.

Proposal. A response to a Request for Proposals.

Proposer. A Person who submits a Proposal in response to a Request for Proposals. In Division 48, the term "Proposer" means a Consultant who submits a Proposal to in response to a Request for Proposals.

Public Contract Review Board. The Board of County Commissioners acting as the local contract review board pursuant to ORS 279A.060; also referred to as "Board."

Public Contract. A sale or other disposal, or a purchase, lease, rental or other acquisition of personal property, services other than Personal Services, public improvements, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Public Contract" does not include grants. This term is used interchangeably with the term "Contract."

Public Improvement. A project for construction, reconstruction or major renovation on real property by or for the County. "Public Improvement" does not include projects for which no funds of the County are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or Emergency Work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement. See ORS 279A.010(1)(aa)

Public Works. Public Works includes but is not limited to roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by the County to serve the public interest but does not include the reconstruction or renovation of privately owned property that is leased by the County. See ORS 279C.800(5).

PUR-1. The County administrative procedure for use for Solicitation of Contracts for Personal Services.

QRF. Qualified Rehabilitation Facility. A non-profit corporation, defined in ORS 279.835(4), to serve Disabled Individuals.

Quote. A response to an informally solicited request for a competitive price or competitive proposal pursuant to Rule 47-0270, Rule 49-0160 or to any other Solicitation where the Solicitation is not made by an Invitation to Bid or a Request for Proposals or Special Procurement.

Request for Proposals or RFP. A Solicitation Document calling for Proposals.

Resident Bidder. A Bidder described in ORS 279A.120(1)(b).

Responsible Offeror (also, Responsible Bidder or Responsible Proposer, as applicable). A Person that has submitted an Offer and meets the standards set forth in Rule 47-0640(1)(c)(F) and that has not been disqualified by the CPCA Manager under Rule 47-0575 or Rule 49-0370, respectively. When used alone, "Responsible" means meeting the aforementioned standards.

Responsive Offer (also, Responsive Bid or Responsive Proposal, as applicable). An Offer that substantially complies with applicable Solicitation procedures and requirements and the Solicitation Document.

Retainage. As used in these Rules, "Retainage" has the meaning given in ORS 279C.550 and means the difference between the amount earned by a Contractor on a Public Contract and the amount paid on the Contract.

Rules. These Public contracting Rules unless otherwise indicated.

Sign, Signed or Signature. Any mark, word or symbol attached to or logically associated with a document and executed or adopted by a Person with the intent to be bound.

Small Procurement. A procurement pursuant to Rule 47-0265

Sole-Source Procurement. A sourcing method authorized by Rule 47-0275.

Solicitation. A request for the purpose of soliciting Offers. This request may take the form of an Invitation for Bid, a Request for Proposal, a Request for Qualifications or a similar document; the process of notifying prospective Offerors that the County requests such Offers; the Solicitation Document itself.

Solicitation Document. An Invitation to Bid, Request for Proposals, Request for Quotes or other similar document issued to invite offers from prospective contractors. This term does not apply to Intermediate Procurements, Informal Quotes or Procurements under 47-0265, 47-0270, 48-0210 or 49-0160. The following are not Solicitation Documents if they do not invite Offers from prospective Contractors: a Request for Qualifications, a prequalification of bidders, a request for information, or a request for product prequalification.

Special Procurement. A sourcing method authorized by Rule 47-0285

Specifications. Any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, including any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.

Trade Services. All remaining services that do not meet the definition for Personal Services.

Women. As used in these Rules this term has the meaning set forth in ORS 200.005(10).

Women Business Enterprise or WBE. A Women business concern described in ORS 200.005(5) and certified as such with the State of Oregon pursuant to ORS 200.055.

Work. The furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and successful completion of all duties and obligations imposed by the Contract.

Written or Writing. Conventional paper documents either manuscript or printed, in contrast to spoken words. It also includes electronic transmissions or Facsimile documents when required by applicable law or to the extent permitted by the Solicitation Document or Contract.

Source: The Code, Attorney General Model Rules, DAS Rules, Former County Rules

DIVISION 15 AUTHORITY OF THE CPCA MANAGER

15-0000 Authority of the CPCA Manager

(1) The authority of the CPCA Manager is as follows:

(a) Solicit and Award all Contracts over the dollar thresholds stated in Rules 47-0270 (1), 48-0210 (1) and 49-0160 (1) on behalf of the County unless the Solicitation Document provides that the Contract shall be awarded by the County Chair or the Board.

(b) Purchase or contract for Goods and services equal to or less than the thresholds stated in (1) (a) above

(c) Delegate authority to make purchases of Goods and services equal to or less than $150,000;

(d) Ensure compliance with all applicable federal and state laws, Multnomah County Rules, policies and procedures governing public and Personal Services Contracts.

(e) Establish and enforce Specifications to procure Goods and services.

(f) Execute County Contracts on behalf of the Chair when authorized by the Chair, using the Signature of the Chair and the initials or the name of the CPCA Manager.

(g) Review and approve or deny, on behalf of the Chair, contract amendments that exceed 20% of the original contract authority amount for contracts of $150,000 or less.

(h) Review and approve or deny, on behalf of the Chair, public improvement contract amendments that exceed 20%, or in the case of contracts for renovation or remodel, 33% of the original contract authority amount for contracts of $75,000 or less.

(i) Review and recommend to the Board approval or denial of contract amendments that exceed the thresholds stated in (g) and (h) above.

(j) Recommend amendments to the Public Contract Review Board Rules to the Board and recommend amendments to County administrative procedures to the Chair;

(k) Develop procedures which comply with applicable statutes, rules, policies, resolutions and administrative procedures.

(l) Review and approve or deny Sole Source Procurements and Special Procurements for $150,000 and less and exemption from Competitive Bidding for Public Improvement contracts for $75,000 and less

(m) Review and recommend to the Board action to be taken on Sole Source Procurement and Special Procurement in excess of $150,000 and exemption from Competitive Bidding for Public Improvement contracts in excess of $75,000

(n) Manage and monitor county-wide Contracts required by county Departments for greater efficiency and economy.

(o) Adopt forms and procedures for all county purchases.

(p) Maintain a file of all original executed copies of Contracts.

(q) Maintain a county-wide Contracts information system.

(r) Manage the county Contract approval process.

(s) Delegate the CPCA Manager's authority to act under these Rules.

(2) All authority to act under these Rules not specifically assigned to the Board, a Department or the CPCA Manager is delegated to the CPCA Manager.

Based on former County Rules 15.000, 15.003 and 15.006

DIVISION 20 MISCELLANEOUS MATTERS

20-0005 Rules Applicable in Lieu of PCRB Rules

(1) The Model Rules adopted by the Attorney General shall not apply to Multnomah County. These Rules shall apply in place of the Attorney General Model Rules.

20-0010 Conflicts of Interest

(1) Definitions The following definitions apply only to this section:

(a) **Actual conflict of interest.** Any action, decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated.

(b) **Business.** Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain.

(c) **Business with which the person is associated.** Any business of which the person or the person's relative is a director, officer, owner or employee, or agent or any corporation in which the person or the person's relative owns or has stock worth $1,000 or more at any time in the preceding calendar year.

(d) **Potential conflict of interest.** Any action or decision or recommendation by a person acting in a capacity as a Public Official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

(A) An interest of membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(B) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative is associated, is a member or is engaged. The Board of Commissioners may by resolution limit the minimum size of or otherwise establish criteria for or identify the smaller classes that qualify under this exception.

(C) Membership in a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

(e) **Public official.** Any person who, when an alleged violation of this chapter occurs, is serving Multnomah County as an elected official, officer, employee, or appointee on any commission, committee or similar advisory body, irrespective of whether the person is compensated for such services.

(f) **Relative.** The spouse of the public official, any children of the public official or of the public official's spouse, and brothers, sisters or parents of the public official or of the public official's spouse.

(g) **Contract Official.** Any public official responsible for processing, awarding, funding or monitoring a county Contract.

(h) **Appointing authority.** The elected official having administrative authority over the affected public official, or such elected official's designee.

(2) Actual and Potential Conflicts of Interest.

(a) Prior to taking any action in connection with a County Contract, every Contract Official shall in Writing notify the Contract Official's appointing authority, the County Auditor and CPCA Manager of any actual conflict of interest or potential conflict of interest of such Contract Official with respect to such proposed Contract.

(b) Upon receiving any information that a proposed Contract involves a potential conflict of interest or actual conflict of interest of any Contract Official, the County Auditor or designated representative shall review the Contract Award procedures for compliance with applicable laws and regulations.

(c) No Contract shall be awarded or executed on behalf of the County without review and approval by the County Auditor if the County Auditor determines that any Contract Official has a potential conflict of interest or actual conflict of interest in connection with the Contract.

20-0025 Annual Reports

(1) The CPCA Manager shall file an annual report of purchasing activity by September 30 for the twelve-month period ending June 30 with the Chair and the Board. The report shall contain the following:

(a) An index of Contracts, Contract Price and contractors.

(b) Information regarding Contracts with MBE, WBE and ESB enterprises as well as Qualified Rehabilitation Facilities.

(c) A summary of contract totals by Department for the prior and current year.

(d) A listing of Contracts awarded through the Solicitation process to contractors who did not score the highest evaluation or have the lowest Responsive Bid.

(e) A listing of Contracts exceeding the dollar limit set forth in Rule 47-0270 (1), 48-0210 (1) and 49-0160 (1) as well as Class II personal services Contracts governed by Administrative Procedure PUR-1 for which only one (1) Bid or Proposal was received.

20-0030 Unauthorized Purchases

(1) An unauthorized purchase is any purchase of Goods or services, including personal services made without following County Procurement requirements or without delegated authority.

(2) The CPCA Manager may approve claims for payment arising from unauthorized purchases or may refer such claims to the Board for approval.

(3) Prior to processing a request for approval of payment of an unauthorized purchase, the CPCA Manager shall require the following information:

(a) Description of the Goods or services furnished as a result of the unauthorized Contract;

(b) A detailed statement of facts relating to the unauthorized purchase, including the name and position of the person who made the unauthorized purchase and an explanation of the reason County Procurement requirements were not followed;

(c) Documentation that the amount claimed by the Contractor is fair and reasonable;

(d) Copies of all invoices and other documents pertinent to the transaction;

(e) Verification that the Goods or services have been received and accepted by the County;

(f) The cost center, WBS element or order code for the purchase;

(g) A statement of the steps taken or planned to prevent recurrence of such unauthorized purchase.

20-0040 Ethics in Public Contracting

(1) These Rules supplement and do not replace ORS 244.010 to ORS 244.400, for the purpose of applying the policy of ORS 244.010 to Oregon Public contracting under the Public Contracting Code and these Rules. Oregon Public contracting is a public trust. The Agencies and Contractors involved in public contracting must safeguard this public trust.

20-0050 Specifications

(1) Departments shall not develop Specifications that primarily benefit a Contractor, directly or indirectly, to the detriment of the County.

(2) Departments shall not develop Specifications that inhibit or tend to discourage public contracting with Qualified Rehabilitation Facilities under Division 55 of these Rules where those Specifications inhibit or tend to discourage the acquisition of QRF-produced Supplies and Services without reasonably promoting the satisfaction of bona fide, practical procurement needs of the County.

(3) Departments shall not develop Specifications that inhibit or tend to discourage public contracting under other public procurement laws or policies of the County.

DIVISION 46 GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

46-0100 Application; Federal Law Supremacy

(1) These PCRB Rules consist of the following four divisions:

(a) This division 46, which is applicable to all public contracting;

(b) Division 47, which describes procedures for public contracting for Goods or Services, as defined in ORS 279B.005;

(c) Division 48, which describes procedures for public contracting for Architectural, Engineering and Land Surveying Services and Related Services; and

(d) Division 49, which describes procedures for public contracting for Construction Services.

(2) In the event of conflict between Rules in this division 46 and Rules in divisions 47, 48 and 49, the Rules in divisions 47, 48 and 49 take precedence over the Rules in this division 46.

(3) Except as otherwise expressly provided in ORS 279C.800 to ORS 279C.870, and notwithstanding ORS chapters 279A, 279B, and ORS 279C.005 to 279C.670, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS chapters 279A, 279B, and ORS 279C.005 to 279C.670 or these PCRB Rules, or require additional conditions in Public Contracts not authorized by ORS chapters 279A, 279B, and ORS 279C.005 to 279C.670 or these PCRB Rules.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.030 & ORS 279A.065

46-0120 Policy

All County departments shall conduct public contracting to further the following policies, and policies set forth in ORS Chapters 279, 279A, 279B and 279C and these PCRB Rules. A sound and responsive public contracting system should:

(1) Simplify, clarify and modernize procurement practices so that they reflect the market place and industry standards.

(2) Instill public confidence through ethical and fair dealing, honesty and good faith on the part of government officials and those who do business with the government.

(3) Promote efficient use of federal, state and local government resources, maximizing the economic investment in public contracting within this state.

(4) Clearly identify rules and policies that implement each of the socioeconomic programs that overlay public contracting and accompany the expenditure of public funds mandated by the legislature or the Board.

(5) Allow impartial and open competition, protecting both the integrity of the public contracting process and the competitive nature of public procurement. In public procurement, as set out in ORS chapter 279B, meaningful competition may be obtained by evaluation of performance factors and other aspects of service and product quality, as well as pricing, in arriving at best value.

(6) Provide 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.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.015 & ORS 279A.065

46-0130 Application of the Code and PCRB Rules; Exceptions

(1) Neither the Code nor these PCRB Rules apply to the following contracts or the classes of contracts:

(a) Contracts for purchases of law enforcement equipment suitable for counter-drug activities and computer equipment pursuant to the e-government Act of 2002 as described in ORS 279A.180, provided that the process described therein is followed;

(b) Grants as defined in ORS 279A.010 (i);

(c) Acquisitions or disposals of real property or interest in real property;

(d) Transfer, sale or disposal of personal property. The Chair is delegated authority to transfer, sell or dispose of personal property in accordance with administrative procedures adopted by the Chair.

(e) Procurements by a Department from an Oregon Corrections Enterprises program;

(f) Contracts between the County and other government entities including the federal government.

(g) Contracts, agreements or other documents entered into, issued or established in connection with:

(A) The incurring of debt by a public body, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;

(B) The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or

(C) The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085;

(h) Contracts for Goods or Services with non-profit agencies providing employment opportunities for Disabled Individuals pursuant to ORS 279.835 to 279.855. However,

Departments shall enter into such contracts in accordance with Division 55 of these Rules.

(i) Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303 and 243.565.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.050, ORS 279A.055, 279A.065 & 279A.180

46-0210 Subcontracting to and Contracting with Emerging Small Businesses; Prohibition Against Discrimination.

(1) A Department may require a Contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:

(a) A business enterprise that is certified under ORS 200.055 as an Emerging Small Business; or

(b) A business enterprise that is:

(A) Certified under ORS 200.055 as an Emerging Small Business; and

(B) Is located in or draws its workforce from economically distressed areas, as designated by the Oregon Economic and Community Development Department.

(2) A subcontractor certified under ORS 200.055 as an Emerging Small Business is located in or draws its workforce from economically distressed areas if:

(a) Its principal place of business is located in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department; or

(b) The Contractor certifies in Writing to the Department that a substantial number of the subcontractor's employees or subcontractors that will manufacture the Goods or complete the services under the Contract reside in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department. For the purposes of making the foregoing determination, the Department shall determine in each particular instance what proportion of a Contractor's subcontractor's employees or subcontractors constitute a substantial number.

(3) The CPCA Manager shall include in each Solicitation Document a requirement that Offerors certify in their Offers on a form prescribed by the CPCA Manager:

(a) That the Offeror has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, Women or Emerging Small Business enterprise certified under ORS 200.055 or against a business enterprise that is owned or controlled by or employs a disabled veteran as defined in ORS 408.225; and

(b) That the Offeror will not, in the performance of the Contract, discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income.

(4) MBE, WBE, ESB and DBE Disqualification.

(a) The County may disqualify a Person from consideration of Award of County Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any public contract pursuant to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (d) and (e) of this section.

(b) As provided in ORS 200.065 and 200.075 the County may disqualify or suspend a Person's right to submit an Offer or to participate in a Contract (e.g. act as a subcontractor) as follows:

(A) The County may disqualify a Person upon finding that the Person engaged in any of the activities made unlawful by ORS 200.065(1) or (2), or if the Person has been disqualified by another public entity pursuant to ORS 200.065.

(B) The County may suspend a Person upon finding that the Person engaged in any of the acts prohibited by ORS 200.075(a) through (c).

(c) The County may disqualify or suspend a Person's right to submit Offers or participate in Public Contracts only for the length of time permitted by ORS 200.065 or ORS 200.075, as applicable.

(d) The County shall notify the Person in Writing of a proposed Disqualification pursuant to this section, served personally or by registered or certified mail, return receipt requested. This notice shall:

(A) State that the County intends to disqualify or suspend the Person;

(B) Set forth the reasons for the Disqualification;

(C) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the County does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;

(D) Include a statement that the hearing will be conducted pursuant to ORS 200.065 and 200.075;

(E) Include a reference to the particular sections of the statutes and rules involved;

(F) State the proposed Disqualification period; and

(G) State that the Person may be represented by legal counsel.

(e) The County shall schedule a hearing upon the County's receipt of the Person's timely request. The County shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to the hearing.

(f) The County will notify the Person in Writing of its Disqualification, served personally or by registered or certified mail, return receipt requested. The notice shall contain:

(A) The effective date and period of Disqualification;

(B) The grounds for Disqualification; and

(C) A statement of the Person's appeal rights and applicable appeal deadlines.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 200.065, ORS 200.075, ORS 279A.065, ORS 279A.105 &ORS 279A.110

DIVISION 46 CONTRACT PREFERENCES

46-0300 Preference for Oregon Goods and Services; Nonresident Offerors

(1) Award When Offers Identical. When a Department receives Offers identical in price, fitness, availability and quality, and chooses to Award a Contract, the Department shall Award the Contract based on the following order of precedence:

(a) The Department shall Award the Contract to the Offeror among those submitting identical offers that is offering Goods or Services that have been manufactured or produced in Oregon.

(b) If two or more Offerors submit identical Offers, and both offer Goods or Services manufactured or produced in Oregon, the Department shall Award the Contract by drawing lots among the identical Offers offering Goods or Services that have been manufactured or produced in Oregon. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.

(c) If the Department receives identical Offers, and none of the identical Offers offer Goods or Services manufactured or produced in Oregon, then the Department shall Award the Contract by drawing lots among the identical Offers.

(2) Determining if Offers are Identical. A Department shall consider Offers identical in price, fitness, availability and quality as follows:

(a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services described in the Invitation to Bid at the same price.

(b) Proposals received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.

(c) Proposals received in response to a Special Procurement conducted pursuant to ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the contracting procedure approved by the Contract Review Authority, the Department determines, in Writing, that two or more Proposals are equally Advantageous to the Department.

(3) Determining if Goods or Services are Manufactured or Produced in Oregon. For the purposes of complying with subsection 1 of this Rule, Departments may request, either in a Solicitation Document, following Closing, or at any other time determined appropriate by the Department, any information the Department determines is appropriate and necessary to allow the Department to determine if the Goods or Services are manufactured or produced in Oregon. A Department may use any reasonable criteria to determine if Goods or Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the Department applies those criteria equally to each Bidder or Proposer.

(4) Procedure for Drawing Lots. In any instance when this Section calls for the drawing of lots, the Department shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of being selected, and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

(5) Nonresident Offerors. When a public contract is awarded to a nonresident Offeror and the contract price exceeds $10,000, the bidder shall promptly report to the Department of Revenue (DOR) on forms provided by the DOR the total contract price, terms of payment, length of contract and such other information as the DOR may require before the Offeror may receive final payment on the public contract. The County shall satisfy itself that this requirement is met before issuing final payment.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 &ORS 279A.120

46-0310 Reciprocal Preferences

When evaluating Bids pursuant to Rule 47-0255, Rule 47-0257 or Rule 49-0390, Departments shall add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides. A Department may rely on the list prepared and maintained by the State of Oregon pursuant to ORS 279A.120(4) to determine both (i) whether the Nonresident Bidder's state gives preference to in-state Bidders, and (ii) the amount of such preference.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.120

46-0320 Preference for Recycled Materials

(1) Preference for Recycled Materials

(a) **Definitions.** The following definitions apply only to this section:

(A) **Post-consumer Waste.** A finished material which would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Post-consumer waste" does not include manufacturing waste

(B) **Recycled Material.** Any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

(C) **Recycled Paper.** A paper product with not less than thirty percent of its total weight consisting of post-consumer waste.

(D) **Recycled Product.** All Goods, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste, with not less than 10 percent of its total weight consisting of post-consumer waste. "Recycled product" also includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

(E) **Secondary Waste Material.** Fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of

real economic value, and includes post consumer waste, but does not include excess virgin resources of the manufacturing process. For paper "secondary waste materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(b) **Policy.** It is the policy of Multnomah County to purchase materials and products that are environmentally sound in their manufacture, use and disposal. The County shall give preference to the purchase of Goods from recycled materials if:

(A) The recycled product is available; and

(B) The recycled product meets applicable standards; and

(C) The recycled product can be substituted for a comparable non-recycled product; and

(D) The cost of the recycled product does not exceed the cost of the non-recycled product by more than five percent; or

(E) If the product is recycled paper, the cost does not exceed the cost of non-recycled paper by more than 15 percent.

(c) **Development of Specifications.** Departments shall review and work with the CPCA Manager to develop Procurement Specifications that encourage the use of recycled products whenever quality of a recycled product is functionally equal to the same product manufactured from virgin resources. Except for Specifications that have been established to preserve the public health and safety, all Procurement and purchasing Specifications shall be established in a manner that encourages Procurement and purchase of recycled products.

(d) **Discretion to Give Preference.** At its discretion, the County may give preference to the purchase of Goods manufactured from recycled materials, even if the cost differential exceeds the five percent preference set forth in subsection (b) (D) of this Rule, or the fifteen percent preference set forth in subsection (b) (E) of this Rule.

(e) **Required Solicitation Language.** Any Written Solicitation under these Rules shall include the following language: "Contractors shall use recyclable products and products which contain recycled content to the maximum extent economically feasible in the performance of the Contract Work set forth in this document."

(f) **Awards to Maximize Recycling.** In any Solicitation which the County has reserved the right to make multiple awards, the recycled product or recycled paper preference shall be applied to the extent possible to maximize the dollar participation of firms offering recycled products or recycled paper in the Contract Award.

(g) **Required Specifications.** The County shall require the Offeror to specify the minimum, if not the exact, percentage of recycled paper in the paper products or recycled product in products offered, and both the post-consumer waste and secondary waste material content. For paper products, the County also shall require that the Offeror specify the fiber type. The Offeror may certify a zero percent recycled paper or product. All Contract provisions impeding the consideration of products with recycled paper or recycled products shall be deleted in favor of performance standards.

(h) **Requirements for Oils.** The County shall require that purchases of lubricating oil and industrial oil be made from the seller whose oil products contain the greater percentage of recycled oil, unless a specific oil product containing recycled oil is:

(A) Not available within a reasonable period of time or in the quantities necessary to meet a Department's needs;

(B) Not able to meet the performance requirements or standards recommended by the equipment or vehicle manufacturer, including any warranty requirements; or

(C) Available only at a cost of the comparable virgin oil products or other percent preference established by the County.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.125

DIVISION 46 COOPERATIVE PROCUREMENT

46-0400 Authority for Cooperative Procurements

(1) As used in Rules 46-0400 to 46-0480:

(a) "Administering Contracting Agency" means a contracting agency that solicits and establishes the original Contract for Procurement of Goods, services or Public Improvements in a Cooperative Procurement. The agency may be the County, a state agency, another local government or an out of state government entity.

(b) "Cooperative Procurement" means a Procurement conducted by, or on behalf of, one or more contracting agencies. "Cooperative Procurement" includes but is not limited to multiparty contracts and Price Agreements.

(c) "Cooperative Procurement Group" means a group of contracting agencies joined through an intergovernmental agreement for the purposes of facilitating Cooperative Procurements.

(d) "Interstate Cooperative Procurement" means a Permissive Cooperative Procurement in which the Administering Contracting Agency is a governmental body, domestic or foreign, that is authorized under the governmental body's laws, rules or regulations to enter into Public Contracts and in which one or more of the participating agencies are located outside this state.

(e) "Joint Cooperative Procurement" means a Cooperative Procurement in which the participating contracting agencies or the Cooperative Procurement Group and the agencies' or group's contract requirements or estimated contract requirements for Price Agreements are identified.

(f) "Original Contract" means the initial Contract or Price Agreement solicited and awarded during a Cooperative Procurement by an Administering Contracting Agency.

(g) "Permissive Cooperative Procurement" means a Cooperative Procurement in which the purchasing contracting agencies are not identified.

(h) "Purchasing Contracting Agency" means either a Department or another contracting agency that procures Goods, services or Public Improvements from a Contractor based on the original Contract established by an Administering Contracting Agency.

(2) The County may participate in, sponsor, conduct or administer Cooperative Procurements as follows:

(a) The County may participate in, sponsor, conduct or administer Joint Cooperative Procurements to establish Contracts or Price Agreements for Goods or Services, that use source selection methods substantially equivalent to those set forth in Rules 47-0255 to 47-0263 and 47-0285 or to establish Contracts for Public Improvements that use a Competitive Bidding process substantially equivalent to that set forth in Division 49.

(b) The County may participate in, sponsor, conduct or administer Permissive Cooperative Procurements to establish contracts or Price Agreements for the acquisition of Goods or Services, but not Public Improvements that use source selection methods substantially equivalent to those set forth in Rule 47-0255 to 47-0263.

(c) The County may participate in, sponsor, conduct or administer Interstate Cooperative Procurements to establish contracts or Price Agreements for the acquisition of Goods or

Services, but not Public Improvements that use source selection methods substantially equivalent to those set forth in Rules 47-0255 to 47-0263.

(3) A Solicitation and Award process uses source selection methods substantially equivalent to those identified in Rules 47-0255 to 47-0263 and 47-0285 when it:

(a) Calls for Award of a Contract on the basis of a lowest Responsible Bidder or a lowest and best Bidder determination in the case of competitive bids, or on the basis of a determination of the Proposer whose Proposal is most Advantageous based on evaluation factors set forth in the Request for Proposals in the case of competitive Proposals;

(b) Does not permit the application of any geographic preference that is more favorable to Bidders or Proposers who reside in the jurisdiction or locality favored by the preference than the preferences provided in ORS 279A.120 (2); and

(c) Uses reasonably clear and precise Specifications that promote suitability for the purposes intended and that reasonably encourage competition.

(4) Before using a Cooperative Procurement the Department shall make a Written determination that the Solicitation and Award process for the original Contract arising out of the Cooperative Procurement is substantially equivalent to those identified in Rules 47-0255 to 47-0263 and 47-0285 as described in subsection (3) above. This Written determination shall be kept in the Procurement File.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.205

46-0410 Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies

(1) If the County is an Administering Contracting Agency of a Cooperative Procurement, the County may establish the conditions under which Persons may participate in the Cooperative Procurements administered by the County as the Administering Contract Agency. Such conditions may include, without limitation, whether each Person that participates in the Cooperative Procurement shall pay administrative fees to the County as the Administering Contract Agency, whether the participants shall enter into a Written agreement with the County as the Administering Contract Agency, or any other matters related to the administration of the Cooperative Procurement and the resulting original Contract. The County acting as an Administering Contract Agency may, but is not required to, include provisions in the Solicitation Document for a Cooperative Procurement or advertise the Solicitation Document in a manner to assist a Purchasing Contracting Agency' compliance with the Code or these PCRB Rules.

(2) If the County, acting as a Purchasing Contracting Agency, enters into a Contract based on a Cooperative Procurement, the County shall comply with the Code and these PCRB Rules, including without limitation those sections of the Code and these PCRB Rules that govern:

(a) The extent to which the County may participate in the Cooperative Procurement,

(b) The advertisement of the Solicitation Document related to the Cooperative Procurement, and

(c) Public notice of the County's intent to establish Contracts based on a Cooperative Procurement.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.205

46-0420 Joint Cooperative Procurements

(1) If the County chooses to participate in, sponsor, conduct or administer a Joint Cooperative Procurement it may do so if:

(a) The Administering Contracting Agency's Solicitation and Award process for the original Contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified in Rules 47-0255 to 47-0263 and 47-0285 or uses a Competitive Bidding process substantially equivalent to the Competitive Bidding process in Division 49;

(b) The Administering Contracting Agency's Solicitation and the original Contract or Price Agreement identifies the Cooperative Procurement Group or each participating Purchasing Contracting Agency and specifies the estimated Contract requirements; and

(c) No material change is made in the terms, conditions or prices of the Contract between the Contractor and the Purchasing Contracting Agency from the terms, conditions and prices of the original Contract between the Contractor and the Administering Contracting Agency.

(2) A Joint Cooperative Procurement may not be a Permissive Cooperative Procurement.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.210

46-0430 Permissive Cooperative Procurements

(1) If the County chooses to participate in, sponsor, conduct or administer a Permissive Cooperative Procurement it may do so if:

(a) The Administering Contracting Agency's Solicitation and Award process for the original Contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified in Rules 47-0255 to 47-0263;

(b) The Administering Contracting Agency's Solicitation and the original Contract allow other contracting agencies to establish contracts or Price Agreements under the terms, conditions and prices of the original Contract;

(c) The Contractor agrees to extend the terms, conditions and prices of the original Contract to the Purchasing Contracting Agency; and

(d) No material change is made in the terms, conditions or prices of the Contract or Price Agreement between the Contractor and the Purchasing Contracting Agency from the terms, conditions and prices of the original Contract between the Contractor and the Administering Contracting Agency.

(2) If a Department intends to act for the County as a Purchasing Contracting Agency, CPCA shall provide public notice of intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement if the estimated amount of the Procurement exceeds $250,000. The notice of intent shall include:

(a) A description of the Procurement;

(b) An estimated amount of the Procurement;

(c) The name of the Administering Contracting Agency; and

(d) A time, place and date by which comments shall be submitted to CPCA regarding the intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.

(3) Public notice of the intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement shall be given in the same manner as provided in Rule 47-0300.

(4) CPCA shall give public notice at least seven (7) Days before the deadline for submission of comments regarding the intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.

(5) If a notice of intent is required to be given to establish a Contract or Price Agreement through a Permissive Cooperative Procurement under subsection (2) of this section:

(a) CPCA shall provide vendors who would otherwise be prospective Bidders or Proposers on the Contract or Price Agreement if the Procurement were competitively procured under Rules 47-0255 to 47-0263, an opportunity to comment on the intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement under Rule 46-0440.

(b) Vendors shall submit comments within seven (7) Days after the notice of intent is published.

(c) If CPCA receives comments on the intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement, before the Department may establish a Contract or Price Agreement through the Permissive Cooperative Procurement, the Department shall make a Written determination that establishing a Contract or Price Agreement through a Permissive Cooperative Procurement is in the best interest of the County. CPCA shall provide a copy of the Written determination to any vendor that submitted comments.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.215

46-0440 Advertisements of Intent to Establish Contracts or Price Agreements through a Permissive Cooperative Procurement

(1) A Department that wishes to enter into a Contract or Price Agreement arising out of a Permissive Cooperative Procurement shall publish notice of its intent to do so if the Department estimates that it will spend in excess of $250,000 on Goods and Services acquired under the Contract or Price Agreement.

(2) For purposes of determining whether a Department shall give the notice required by this Rule, a Department will spend in excess of $250,000 for Goods and Services acquired under a Contract or Price Agreement arising out of a Permissive Cooperative Procurement if:

(a) The Department's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides that the Department will make payments over the term of the Contract or Price Agreement that will, in aggregate, exceed $250,000, whether or not the total amount or value of the payments is expressly stated;

(b) The Department's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides for a guaranteed maximum price, or a maximum not to exceed amount in excess of $250,000; or

(c) At the time the Department enters into the Contract or Price Agreement, the Department reasonably contemplates, based on historical or other data available to the Department, that the total payments it will make for Goods or Services under the Contract or Price Agreement will, in aggregate, exceed $250,000 over the anticipated duration of the Contract or Price Agreement.

(3) The notice of intent required by this Rule shall contain the information required by Rule 46-0430(2)(b), and CPCA shall advertise the notice in the same manner as provided in Rule 47-0300. CPCA shall give the notice required by this Section no fewer than 7 Days before the deadline for submitting comments regarding the Department's intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.

(4) A Department that intends to establish a Contract or Price Agreement arising out of a Permissive Cooperative Procurement it administers as an Administering Contract Agency may satisfy the notice requirements set forth in this Rule by including the information required by Rule 46-0430(2)(b) in the Solicitation Document related to the Permissive Cooperative Procurement, and including instructions in the Solicitation Document to potential Offerors describing how they may submit comments in response to the Department's intent to establish a Contract or Price Agreement through the Permissive Cooperative Procurement. The content and timing of such notice shall comply in all respects with Rule 46-0430 and these Rules.

(5) A Department acting as a Purchasing Contracting Agency shall respond to any comments on its intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement as set forth in Rule 46-0430(5)(c).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.215

46-0450 Interstate Cooperative Procurements

(1) A Department may establish a contract or price agreement through an Interstate Cooperative Procurement only if:

(a) The Solicitation and Award process for the original Contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified in Rules 47-0255 to 47-0263

(b) The Administering Contracting Agency's Solicitation and the original Contract allows other governmental bodies to establish contracts or Price Agreements under the terms, conditions and prices of the original Contract; and

(c) The Administering Contracting Agency permits the Contractor to extend the use of the terms, conditions and prices of the original Contract to the Purchasing Contracting Agency.

(2) In addition to the requirements in subsection (1) of this section:

(a) The Department, or the Cooperative Procurement Group of which the Department is a member, shall be listed in the Solicitation of the Administering Contracting Agency as a party that may establish contracts or Price Agreements under the terms, conditions and prices of the original Contract, and the Solicitation shall be advertised in Oregon; or

(b) The Department, or the Cooperative Procurement Group of which the Department is a member, shall advertise a notice of intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement.

(A) The notice of intent shall include:

(i) A description of the Procurement;

(ii) An estimated amount of the Procurement;

(iii) The name of the Administering Contracting Agency; and

(iv) A time, place and date by which comments shall be submitted to CPCA regarding the intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement.

(B) Public notice of the intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement shall be given in the same manner as provided in Rule 47-0300.

(C) The notice shall be given at least seven (7) Days before the deadline for submission of comments regarding the intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement.

(3) If a Department is required to provide notice of intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement under subsection (2) of this section:

(a) CPCA shall provide vendors who would otherwise be prospective Bidders or Proposers on the Contract or Price Agreement, if the Procurement were competitively procured under Rules 47-0255 to 47-0263, an opportunity to comment on the intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement.

(b) Vendors shall submit comments within seven (7) Days after the notice of intent is published

(c) If CPCA receives comments on the intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement, before the Department may establish a Contract or Price Agreement through the Interstate Cooperative Procurement, the Department shall make a Written determination that establishing a Contract or Price Agreement through an Interstate Cooperative Procurement is in the best interest of the County. CPCA shall provide a copy of the Written determination to any vendor that submitted comments.

(4) For purposes of this section, an Administering Contracting Agency may be any governmental body, domestic or foreign, authorized under its laws, rules or regulations to enter into contracts for the Procurement of Goods and services for use by a governmental body.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.220

46-0460 Advertisements of Interstate Cooperative Procurements

A Department may participate in an Interstate Cooperative Procurement as a Purchasing Contracting Agency if at least one (1) of the following occurs:

(1) The Solicitation Document for the Interstate Cooperative Procurement lists the Department or the Cooperative Procurement Group of which the Department is a member as a party that may enter into Contracts or Price Agreements under the terms and conditions of the original Contract, and the Solicitation Document is advertised in Oregon in compliance with Rule 47-0300 by either:

(a) The Department; or

(b) The Cooperative Procurement Group, or a member of the Cooperative Procurement Group, of which the Department is a member; or

(c) Another Purchasing Contracting Agency that is subject to the Code, so long as such advertisement would, if given by the Department, comply with ORS Rule 47-0300; or

(2) If the Solicitation Document issued by the Administering Contract Agency was not advertised in accordance with Rule 46-0460(a), the Department gives notice of its intent to enter into a Public Contract or Price Agreement based on the terms of the Interstate Cooperative Procurement. The notice of intent shall contain the information required by Rule 46-0450(2)(b)(B), and the notice shall be advertised in the same manner as provided in 47-0300. CPCA shall give the notice required by this Section no fewer than seven (7) Days before the deadline for submitting comments regarding the intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.

(3) The Purchasing Contracting Agency shall respond to any comments on its intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement as set forth in Rule 46-0430(5)(c).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.220

46-0470 Protests and Disputes

(1) If a Bidder or Proposer wishes to protest the Procurement process, the contents of a Solicitation Document related to a Cooperative Procurement or the Award or proposed Award of an original Contract, the Bidder or Proposer shall make such protest in accordance with Rules 47-0700 through 47-0760. If the Administering Contract Agency is not subject to the Code, then Bidders or Proposers shall make such protests in accordance with the processes and procedures established by the Administering Contract Agency.

(2) The failure of a Purchasing Contracting Agency to exercise any rights or remedies it has under a Contract or Price Agreement entered into through a Cooperative Procurement shall not affect the rights or remedies of any other agency that participates in the Cooperative Procurement, including the Administering Contract Agency, and shall not prevent any other Purchasing Contracting Agency from exercising any rights or seeking any remedies that may be available to it under its own Contract or Price Agreement arising out of the Cooperative Procurement.

(3) A protest regarding the use of a Cooperative Procurement by a Department as a Purchasing Contracting Agency after the execution of an original Contract shall be directed to CPCA. The protest shall be in accordance with the provisions of Rules 47-0700, 47-0730, 47-0740 and 47-0760 and is limited in scope to the County's authority to enter into a Cooperative Procurement Contract.

(4) The decision of the County to use a Cooperative Procurement is reviewable in the circuit court of Multnomah County.

(5) Disputes regarding Contract performance between another agency acting as a Purchasing Contracting Agency where the County is the Administering Contracting Agency shall be resolved solely by the Purchasing Contracting Agency and the Contractor.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.225

46-0480 Contract Amendments

A Purchasing Contracting Agency may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in Rule 47-0800.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

DIVISION 46 PROCUREMENT FILES

46-0490 Procurement Files

(1) This Rule applies to all purchases subject to these Rules in excess of $5,000.

(2) CPCA is responsible for initiating and maintaining the procurement file for procurement processes performed by CPCA for Countywide procurements and formal procurements processed on behalf of a Department.

(3) A Department is responsible for initiating and maintaining the procurement file for intermediate, informal, emergency or any other procurement processed by the Department.

(4) The information required to be part of the procurement file may be maintained in more than one file as long as there is a system that will allow all documents associated with an individual procurement to be retrieved as necessary.

(5) Procurement File(s) shall contain:

(a) ~~A~~ copy of an executed Contract, if awarded;

(b) The record of the actions used to develop the Contract;

(c) A copy of the Solicitation, if any;

(d) Any required findings or statement of justification for the selection of the Contractor and sourcing method used; and

(6) Procurement File(s) shall also contain, if required by these Rules:

(a) A list of prospective contractors notified of any Solicitation;

(b) The method used to advertise or notify prospective contractors;

(c) A copy of each Offer that resulted in the Award of a Contract;

(d) The method of evaluating Offers, the results of the evaluation, and basis of selection;

(e) The record of any Negotiation of the Statement of Work and results;

(f) A record of all material Communications regarding the Solicitation by interested contractors;

(g) ~~All~~ Information describing how the Contractor was selected, including the basis for awarding the Contract;

(h) A copy of the Request for Special Procurement, if any; and

(i) Documentation related to Cooperative Procurements.

(7) CPCA and Departments shall maintain Procurement Files, in accordance with the retention requirements of administrative procedure REC 1 and any other applicable County administrative procedures. Procurement Files shall be made immediately available for review upon the request of the CPCA Manager.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070
Stats. Implemented: ORS 279A.050; ORS 279A.065(5); ORS 279A.070; and ORS 279A.140

DIVISION 47 PUBLIC PROCUREMENTS FOR GOODS OR SERVICES - GENERAL PROVISIONS

47-0000 Application

(1) These Division 47 Rules implement ORS chapter 279B, Public Procurements and apply to the Procurement of Goods or Services. These Rules do not apply to Procurement of Personal Services as defined in subsection (2) below. Procurement of Personal Services is governed by administrative procedure PUR-1.

(2) Personal Services are services which require specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, information technology or other consultant, broadcaster or artist (including a photographer, filmmaker, painter, weaver or sculptor) and contracts for human services. Personal Services do not include:

(a) The services of an Architect, Engineer, Land Surveyor or provider of Related Services under Division 48.

(b) Products supplied through Contracts which, even though in a professional capacity, are primarily for a product. E.g., a Contract with a data processing consultant to develop a new computer system design is for Personal Services, but a Contract to design a computer system and supply all the hardware is primarily for a tangible product;

(c) Services supplied through Contracts with a temporary service or personnel agency to supply labor, which is of a type that can generally be done by any competent worker; examples include data entry, keypunch, janitorial, security guard, crop spraying, laundry, and landscape maintenance services;

(3) Services supplied through Contracts with a Contractor that primarily supplies labor that can generally be done by any competent or skilled worker including, but not limited to conference planning, collection, crowd management, first aid training, courier services and surveys to collect data;

(a) Services supplied through Contracts for trade-related activities to be paid on a labor and materials basis; and

(b) Contracts for trade-related services to accomplish routine, continuing functions, even though a specific license is required to engage in the activity. Examples include repair and maintenance of equipment or structures.

(4) The CPCA Manager shall have discretion to determine whether a particular type of Contract or service falls within the foregoing definition.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.015
Former PCRB Rule 340-1080

DIVISION 47 SOURCE SELECTION

47-0250 Methods of Source Selection; Feasibility Determination; Cost Analysis

(1) **Methods of Source Selection.** Except as otherwise permitted by these Rules, Awards of Public Contracts for Goods or Services shall be based on Offers received in response to either competitive sealed Bids pursuant to Rules 47-0255 and 47-0257 or competitive sealed Proposals pursuant to Rules 47-0260 to 470-0263. The source selection method to be used for contracts that are at no cost to the County but generate revenue for the contractor shall be determined by the potential dollar amount the contractor is expected to receive (e.g. a concession contract).

(2) **Analysis Required Before Conducting Certain Procurements Over $250,000.** Before conducting a procurement for services (except for a procurement for "client services" as that term is defined in OAR 125-246-0110) with an estimated Contract Price greater than $250,000 a Department shall make a determination in Writing that using the County's own personnel or resources to perform the services that the Department intends to procure is not feasible. If the Department determines that performing the services the Department intends to procure with County resources and personnel is feasible, before conducting a procurement for such services, the Department shall conduct a cost analysis and make a Written determination that the County would incur less cost in conducting the procurement than performing the services with the County's own personnel and resources.

(3) **Feasibility Determination.** Before determining that using County personnel and resources is not feasible because the County lacks the personnel and resources to perform the services the Department intends to procure the Department shall make a determination that the circumstances in subsection (a) or (b) exist at the time of the proposed procurement:

(a) The County lacks the specialized capabilities, experience or technical or other expertise necessary to perform the services. In making the finding, the Department shall compare the County's capability, experience or expertise in the field most closely involved in performing the services with a potential contractor's capability, experience or expertise in the same or a similar field; or

(b) Special circumstances require the County to procure the services by contract. Special circumstances may include, but are not limited to, circumstances in which:

(A) The terms under which the County receives a grant or other funds for use in a procurement require the County to obtain services through an independent contractor;

(B) Other state or federal law requires the County to procure services through an independent contractor;

(C) The procurement is for services that are incidental to a contract for purchasing or leasing real or personal property, including service and maintenance agreements for equipment that is leased or rented;

(D) The Department cannot accomplish policy, administrative or legal goals, including but not limited to avoiding conflicts of interest or ensuring independent or unbiased findings in cases when using the County's existing personnel or persons the County could hire through a regular or ordinary process would not be suitable;

(E) The procurement is for services which are being procured using an Emergency Procurement process authorized by these Rules;

(F) The procurement is for services, the need for which is so urgent, temporary or occasional that attempting to perform the services with the County's own personnel

(G) or resources would cause a delay that would frustrate the purpose for obtaining the services;

(H) The services that the Department intends to procure will be completed within six months after the date on which the contract for the services is executed; or

(I) Other circumstances, conditions or occurrences would make the Services, if performed by the County's employees, incapable of being managed, utilized or dealt with successfully in terms of the quality, timeliness of completion, success in obtaining desired results, or other reasonable needs of the County.

(4) **Written Cost Analysis.** If a determination is made after completion of the analysis in subsection (3) above that it is feasible to perform the services the Department intends to procure with the County's own personnel or resources, before proceeding with the procurement, the Department shall conduct a Written cost analysis which shall include the following:

(a) Basic Comparison. The Written cost analysis must compare an estimate of the County's cost of performing the Services with an estimate of the cost a potential Contractor would incur in performing the Services. However, the Department may proceed with the Procurement for Services only if it determines that the County would incur more cost in performing the Services with the County's own personnel or resources than it would incur in procuring the Services from a Contractor.

(b) Costs of Using County's Own Personnel and Resources. When estimating the County's cost of performing the Services, the Department shall consider cost factors that include:

(A) The salary or wage and benefit costs for the employees of the County who would be directly involved in performing the Services. These costs include those salary or wage and benefit costs of the employees who inspect, supervise or monitor the performance of the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision, or monitoring of the performance of the subject Services.

(B) The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, equipment and supplies used or consumed in the provision of the Services.

(C) The costs incurred in planning for, training for, starting up, implementing, transporting and delivering the Services.

(D) Any costs related to stopping and dismantling a project or operation because the Department intends to procure a limited quantity of Services or to procure the Services within a defined or limited period of time.

(E) The miscellaneous costs related to performing the Services. These costs exclude the County's indirect overhead costs for existing salaries or wages and benefits for administrators, and exclude costs for rent, equipment, utilities and materials, except to the extent the cost items identified in this sentence are attributed solely to performing the Services and would not be incurred unless the County performed the Services.

(F) The costs in subsections (A) through (E) of this rule do not constitute an exclusive list of cost information. A Department may consider other reliable information that

bears on the cost to the County of performing the Services. For example, if the Department has accounted for its actual costs of performing the Services under consideration, or reasonably comparable Services, in a relatively recent Services project, the Department may consider those actual costs in making its estimate.

(c) Costs a Potential Contractor Would Incur. When estimating the costs a potential Contractor would incur in performing the Services, the Department shall consider cost factors that include:

(A) The average or actual salary or wage and benefit costs for Contractors and Contractor employees:

(i) Who work in the business or industry most closely involved in performing the Services; and

(ii) Who would be necessary and directly involved in performing the Services or who would inspect, supervise or monitor the performance of the Services.

(B) The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.

(C) The miscellaneous costs related to performing the Services. These miscellaneous costs include reasonably foreseeable fluctuations in the costs listed in this rule over the expected duration of the Procurement.

(D) The costs described in subsections (A) through (C) of this subsection do not constitute an exclusive list of cost information. A Department may consider other reliable information that bears on the costs a potential Contractor would incur. For example, if the County, in the reasonably near past, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable Services, the Department may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the Department may consider what the County actually paid out under a Contract for the same or similar Services.

(5) **Decision Based on Cost Comparison.** After comparing the difference between the costs estimated for the County to perform the Services and the estimated costs a potential Contractor would incur in performing the Services, subject to the exceptions in subsections (6) and (7) below, a Department may proceed with the Procurement if the County would incur more cost in performing the Services with the County's own personnel and resources than it would incur in procuring the Services from a Contractor.

(6) **Exception Based on Salaries or Wages and Benefits.** If the sole reason that the costs estimated for the County to perform the Services exceed the estimated costs a potential Contractor would incur in performing the Services is because the average or actual salary or wage and benefit costs for a Contractor's employees are lower than the salary or wage and benefit costs for employees of the County, then the Department may not proceed with the Procurement.

(7) **Exception Based on Lack of County Personnel and Resources.** In cases in which the Department determines that it would incur less cost in providing the Services with its own personnel and resources, the Department nevertheless may proceed with the Procurement if, at the time the Department intends to conduct the Procurement, the County determines that it lacks personnel and resources to perform the Services within the time the Department requires them.

(8) Reporting. When a Department conducts a procurement under this section, the Department shall maintain all records of the analyses described in this section in the project file and shall provide to the CPCA Manager copies of each Written determination that the County lacks personnel and resources to perform the Services within the time the Department requires them and each Written cost analysis. The CPCA Manager shall provide to the Board each calendar quarter, copies of each Written cost analysis and Written determination prepared under this section.

Stat. Auth.: ORS 279A.065 Or Laws 2009, c 880, §§ 3, 4
Stats. Implemented: ORS 279B.050, 050, Or Laws 2009, c 880, § 2-4

47-0255 Competitive Sealed Bidding

(1) Generally. The County may procure Goods or Services by competitive sealed bidding as set forth in this Rule. The CPCA Manager may issue a request for information, a request for interest or other preliminary documents to obtain information useful in the preparation of an Invitation to Bid. An Invitation to Bid is used to initiate a competitive sealed bidding Solicitation and shall contain the following information:

(a) A time and date by which the bids shall be received and a place at which the bids shall be submitted, and may, in the sole discretion of the CPCA Manager, direct or permit the submission and receipt of bids by electronic means;

(b) The name and title of the person designated for the receipt of bids and the person designated by the CPCA Manager as the contact person for the Procurement, if different;

(c) A Procurement description;

(d) A time, date and place that prequalification applications, if any, shall be filed and the classes of Work, if any, for which Bidders shall be prequalified in accordance with Rule 47-0550;

(e) A statement that the County may cancel the Procurement or reject any or all bids in accordance with Rule 47-0660;

(f) A statement that "Contractors shall use recyclable products and products which contain recycled content to the maximum extent economically feasible in the performance of the Contract Work set forth in this document." (See, Rule 46-0320(1)(e))

(g) A statement that requires the Contractor or subcontractor to possess an asbestos abatement license, if required under ORS 468A.710;

(h) All contractual terms and conditions applicable to the Procurement;

(i) General Information;

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the County's representatives at the conference are not binding upon the County unless confirmed by Written Addendum;

(B) The form and instructions for submission of Bids and any other special information;

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) A statement that each Bidder shall identify whether the Bidder is a Resident Bidder;

(F) **Bidder**'s certification of nondiscrimination in obtaining required subcontractors in accordance with Rule 46-0210;

(G) How the County will notify Bidders of Addenda and how the County will make Addenda available (See Rule 47-0430);

(j) Department Need to Purchase. The character of the Goods or Services the Department is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. The Department's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the Contract, if the County awards one;

(B) Outline the anticipated duties of the Contractor under the Contract;

(C) Establish the expectations for the Contractor's performance under the Contract; and

(D) Require in the scope of work, unless the Department for Good Cause specifies otherwise, that the Contractor meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Department is purchasing.

(k) Bidding and Evaluation Process.

(A) The anticipated Solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Solicitation Document shall set forth objective evaluation criteria in accordance with the requirements of Rule 47-0600. Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, ~~such~~ the evaluation factors shall be reasonable estimates of actual future costs based on information the Department has available concerning future use; and

(C) If the Department intends to Award Contracts to more than one Bidder pursuant to Rule 47-0600(4)(c), the Department shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award;

(l) Applicable preferences pursuant to Rules 46-0310 (in state preference) and 46-0320 (recycled materials preference) and 47-0600(1)(b)(B) (in state printing preference);

(m) All contractual terms and conditions in the form of Contract provisions the Department determines are applicable to the Procurement including terms and conditions specifying the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The County's right to reduce or withhold payment under the Contract;

(B) The County's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the Contract; and

(C) The County's rights, which the County may assert individually or in combination, to declare a default of the Contract, to terminate the Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(n) Where applicable, requirements for payment of a Living Wage.

(2) A Department may require bid security if the County determines that bid security is reasonably necessary or prudent to protect the interests of the County. CPCA shall return the bid security to all Bidders upon the execution of the Contract. CPCA shall retain the bid security if a Bidder who is awarded a Contract fails to promptly and properly execute the Contract. For purposes of this paragraph, prompt and proper execution of the Contract includes all action by a Bidder that is necessary to the formation of a Contract in accordance with the Invitation to Bid, including the posting of performance security and the submission of proof of insurance when required by the Invitation to Bid.

(3) Public notice of the competitive sealed bidding Solicitation shall be given as set forth in Rule 47-0300.

(4) The CPCA Manager shall open bids publicly at the time, date and place designated in the Invitation to Bid.

(a) The amount of a bid, the name of the Bidder and other relevant information shall be recorded. The record shall be open to public inspection.

(b) Notwithstanding any requirement to make bids open to public inspection after the issuance of notice of intent to Award a Contract, the County may withhold from disclosure to the public trade secrets, as defined in ORS 192.501, and information submitted to a public body in confidence, as described in ORS 192.502, that are contained in a bid.

(5) The CPCA Manager shall evaluate all bids that are received before the time and date indicated for bid closing in the Invitation to Bid. The CPCA Manager shall evaluate the bids based on the requirements set forth in the Invitation to Bid. The requirements may include, in addition to the information described in subsection (1)(k)(B) of this Rule, criteria to determine minimum acceptability, such as inspection, testing, quality and suitability for intended use or purpose. Criteria that will affect the bid price and will be considered in evaluation for Award including, but not limited to, discounts, transportation costs and Life Cycle Costing. The Invitation to Bid shall set forth the evaluation criteria to be used. No criteria may be used in a bid evaluation that is not set forth in the Invitation to Bid or in a qualified products list maintained under Rule 47-0525. The CPCA Manager shall, for the purpose of evaluating bids, apply any applicable preference described in Rules 46-0300, 46-0310 and 46-0320.

(6) CPCA Manager may not consider for Award bids received after the time and date indicated for bid closing in the Invitation to Bid.

(7) The CPCA Manager may retain bids or copies of bids received after the Bid Closing.

(8) Correction and withdrawal of bids before and after bid Closing and the cancellation of awards or contracts based on bid mistakes shall be done in accordance with Rules 47-0460 and 47-0470.

(9) The cancellation of invitations to bid and the rejection of bids shall be in accordance with Rules 47-0650 and 47-0660.

(10) The CPCA Manager shall, in accordance with Rule 47-0610, issue to each Bidder or shall post, electronically or otherwise, a notice of intent to Award.

(11) If a Contract is awarded, the CPCA Manager shall Award the Contract:

(a) To the lowest Responsible Bidder whose bid substantially complies with the requirements and criteria set forth in the Invitation to Bid and with all prescribed public Procurement procedures and requirements; or

(b) When the Invitation to Bid specifies or authorizes the Award of multiple contracts, to the Responsible Bidders:

(A) Whose bids substantially comply with the requirements and criteria set forth in the Invitation to Bid and with all prescribed public Procurement procedures and requirements; and

(B) Who qualify for the Award of a Public Contract under the terms of the Invitation to Bid.

(12) The successful Bidder shall promptly execute a Contract. The successful Bidder's duty to promptly execute a Contract includes the duty to take all action that is necessary to the formation of a Contract in accordance with the Invitation to Bid, including the posting of performance security and the submission of proof of insurance when required by the Invitation to Bid.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.055

47-0257 Multistep Sealed Bids

(1) **General.** When a Department considers it impractical to initially prepare a Procurement description to support an Award based on price, CPCA may issue a multistep Invitation to Bid requesting the submission of un-priced submittals, and then later issue an Invitation to Bid limited to the Bidders whom the CPCA Manager has determined to be eligible to submit a priced bid under the criteria set forth in the initial Solicitation of unpriced submittals.

(2) **Phased Process.** Multistep bidding is a phased process that seeks necessary information or unpriced technical Bids in the initial phase and regular competitive sealed bidding, inviting Bidders who submitted technically eligible Bids in the initial phase to submit competitive sealed price Bids on the technical Bids in the final phase. The Contract shall be Awarded to the lowest Responsible Bidder. If time is a factor, the CPCA Manager may require Bidders to submit a separate sealed price Bid during the initial phase to be opened after the technical evaluation.

(3) **Public Notice.** Whenever multistep sealed Bids are used, public notice for the first phase shall be given in accordance with Rule 47-0300. Public notice is not required for the subsequent phases. However, the CPCA Manager shall give notice of subsequent phases to all Bidders and inform Bidders of the right to protest Addenda issued after initial Closing pursuant to Rule 47-0430 and inform Bidders excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to Rule 47-0720.

(4) **Procedures Generally.** In addition to the procedures set forth in Rules 47-0300 to 47-0490, the County shall employ the procedures set forth in this Rule for multistep bidding:

(a) Solicitation Protest. The Solicitation Document shall provide that prior to the Closing of phase one there shall be an opportunity to protest the Solicitation under Rule 47-0730.

(b) Addenda Protest. The Solicitation Document may provide an opportunity to protest any Addenda issued during phase two pursuant to Rule 47-0430(3)(b).

(c) Exclusion Protest. The Solicitation Document may, but is not required to provide an opportunity for a Bidder to protest exclusion from the second round of multistep sealed Bids as set forth in Rule 47-0720.

(d) Administrative Remedy. Proposers may submit a protest to any Addenda or to any action by the County that has the effect of excluding the Proposer from the second phase of multistep bidding to the extent such protests are provided for in the Solicitation Document or required by this section. Failure to so protest shall be considered the Bidder's failure to pursue an administrative remedy made available to the Bidder by the County.

(e) Award Protest. The County shall provide an opportunity to protest its intent to Award a Contract pursuant to Rule 47-0740. An Affected Bidder may protest, for any of the bases set forth in Rule 47-0720(2), its exclusion from the second phase of a multistep sealed Bid, or an Addendum issued following initial Closing, if the County did not previously provide Bidders the opportunity to protest such exclusion or Addendum.

(5) Procedure for Phase One of Multistep Sealed Bids.

(a) **Form.** Multistep sealed bidding shall be initiated by the issuance of an Invitation to Bid in the form and manner required for competitive sealed Bids except as hereinafter provided. In addition to the requirements set forth in Rule 47-0255(1), the multistep Invitation to Bid shall state:

(A) That un-priced technical Bids are requested;

(B) Whether price Bids are to be submitted at the same time as un-priced technical Bids; if they are, that such price Bids shall be submitted in a separate sealed envelope;

(C) That the Solicitation is a multistep sealed Bid Procurement, and priced Bids will be considered only in the second phase and only from those Bidders whose un-priced technical Bids are found eligible in the first phase;

(D) The criteria to be used in the evaluation of un-priced technical Bids;

(E) That the County, to the extent that it finds necessary, may conduct oral or Written Discussions for the purposes of clarification of the un-priced technical Bids;

(F) That the Goods or Services being procured shall be furnished generally in accordance with the Bidder's technical Bid as found to be finally eligible and shall meet the requirements of the Invitation to Bid.

(G) Whether Bidders excluded from subsequent phases have a right to protest the exclusion before the notice of intent to Award. Such information can be given or changed by Addenda.

(b) Addenda to the Invitation to Bid. After receipt of un-priced technical Bids, Addenda to the Invitation to Bid shall be distributed only to Bidders who submitted un-priced technical Bids.

(c) Receipt and Handling of Un-priced Technical Bids. Un-priced technical Bids need not be opened publicly.

(d) Evaluation of Un-Priced Technical Bids. Un-priced technical Bids submitted by Bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation to Bid. Un-priced technical Bids shall be categorized as:

(A) Eligible;

(B) Potentially eligible; that is, reasonably susceptible of being made eligible; or

(C) Ineligible. CPCA shall record in Writing the basis for determining a Bid ineligible and make it part of the Procurement File. The Department may initiate phase two of the procedure if, in the Department's opinion, there are sufficient eligible un-priced technical Bids to assure effective price competition in the second phase without technical Discussions. If the Department finds that such is not the case, CPCA may issue an Addendum to the Invitation to Bid or engage in technical Discussions as set forth in subsection (5)(e) of this Rule.

(e) **Notice of Ineligible Un-priced Technical Bid.** When CPCA determines a Bidder's un-priced technical Bid to be ineligible, such Bidder shall not be afforded an additional opportunity to supplement its technical Bids.

(f) **Discussion of Un-priced Technical Bids.** The Department may seek clarification of a technical Bid by any eligible or potentially eligible Bidder. During the course of such Discussions, the Department shall not disclose any information derived from one un-priced technical Bid to any other Bidder. Once Discussions are begun, any Bidder who has not been notified that its Bid has been finally found ineligible may submit supplemental information amending its technical Bid at any time until the Closing of the final step established by the Solicitation Document. Such submission may be made at the request of the Department or upon the Bidder's own initiative.

(g) **Mistakes During Multistep Sealed Bidding.** Mistakes may be corrected or Bids may be withdrawn during phase one:

(A) Before un-priced technical Bids are considered;

(B) After any Discussions have commenced under subsection(5)(e);

(C) When responding to any Addenda of the Invitation to Bid; or

(D) In accord with 47-0470.

(6) Procedure for Phase Two of Multistep Sealed Bids.

(a) **Initiation.** Upon the completion of phase one, CPCA shall either:

(A) Open price Bids submitted in phase one (if price Bids were required to be submitted) from Bidders whose un-priced technical Bids were found to be eligible; or

(B) If price Bids have not been submitted, technical Discussions have been held, or Addenda to the Invitation to Bid have been issued, invite each eligible Bidder to submit a price Bid.

(b) **Conduct.** Phase Two shall be conducted as any other competitive sealed Bid Procurement except:

(A) As specifically set forth in this Rule;

(B) No public notice need be given of this invitation to submit price Bids because such notice was previously given.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.055

47-0260 Competitive Sealed Proposals

(1) The County may solicit and Award a Public Contract for Goods or services, or may Award multiple Public Contracts for Goods or services when specified in the Request for Proposals, by requesting and evaluating competitive sealed Proposals. The CPCA Manager may issue a request for information, a request for interest, a request for qualifications or other preliminary documents to obtain information useful in the preparation of a Request for Proposals.

(2) The Request for Proposals shall include:

(a) A time and date by which sealed Proposals shall be received, and a place at which the Proposals shall be submitted, and may, in the sole discretion of the County, direct or permit the submission and receipt of Proposals by electronic means.

(b) The time, date and place of Opening;

(c) The office where the Solicitation Document may be reviewed;

(d) The name and title of the person designated for receipt of Proposals and the person designated by the CPCA Manager as the contact person for the Procurement, if different;

(e) Department Need to Purchase. The character of the Goods or Services the Department is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements The Department's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the Contract, if the County awards one;

(B) Outline the anticipated duties of the Contractor under the Contract;

(C) Establish the expectations for the Contractor's performance under the Contract; and

(D) Require in the scope of work, unless the Department for Good Cause specifies otherwise, that the Contractor meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Department is purchasing.

(f) A time, date and place that prequalification applications, if any, shall be filed and the classes of Work, if any, for which Proposers shall be prequalified in accordance with Rule 47-0550;

(g) Notice of any pre-Offer conference including the time, date and location of any pre-Offer conference and whether attendance at the conference will be mandatory or voluntary and a provision that provides that statements made by the Department's representatives at the conference are not binding upon the Department unless confirmed by Written Addendum;

(h) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means;

(i) Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with Rule 46-0210(3);

(j) How the County will notify Proposers of Addenda and how the County will make Addenda available. (See, Rule 47-0430);

(k) The anticipated Solicitation schedule, deadlines, protest process;

(l) The evaluation process, including but not limited to the relative importance of price and any other evaluation factors used to rate the Proposals in the first tier of competition, and if more than one tier of competitive evaluation may be used, a description of the process under which the Proposals will be evaluated in the subsequent tiers. Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates of actual future costs based on information available to the Department;

(m) The selection criteria, which may include, but is not limited to, negotiation with the highest ranked Proposer, competitive Negotiations, multiple-tiered competition designed to identify a class of Proposers that fall within a Competitive Range or to otherwise eliminate from consideration a class of lower ranked Proposers, or any combination of methods, as authorized or prescribed by these Rules;

(n) Whether the County intends to Award Contracts to more than one (1) Proposer pursuant to Rule 47-0600(4)(d), and, if so, the manner in which it will determine the number of Contracts it will Award.

(o) A statement that the County may cancel the Procurement or reject any or all Proposals in accordance with Rule 47-0660;

(p) A statement that "Contractors shall use recyclable products and products which contain recycled content to the maximum extent economically feasible in the performance of the Contract Work set forth in this document;" (See, Rule 46-0320(1)(e).

(q) A statement that requires the Contractor or subcontractor to possess an asbestos abatement license, if required under ORS 468A.710;

(r) All contractual terms and conditions in the form of Contract provisions the Department determines are applicable to the Procurement including terms and conditions specifying the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The County's right to reduce or withhold payment under the Contract;

(B) The County's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the Contract; and

(C) The County's rights, which the County may assert individually or in combination, to declare a default of the Contract, to terminate the Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(s) Where applicable, requirements for payment of a Living Wage.

(3) The Request for Proposals may also, if applicable:

(a) Identify contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the Contract;

(b) Specify that it will include or use a Proposer's terms and conditions that have been pre-negotiated under Rule 47-0550;

(c) Identify those contractual terms or conditions the Department reserves, in the Request for Proposals, for negotiation with Proposers;

(d) Request that Proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the Request for Proposals;

(e) Contain or incorporate the form and content of the Contract that the County will accept, or suggested Contract terms and conditions that nevertheless may be the subject of Negotiations with Proposers;

(4) The County may require Proposal security in any form deemed prudent by the County. Proposal security shall serve the same function with respect to requests for Proposals as bid security serves with respect to invitations to bid under Rule 47-0255(2).

(a) CPCA shall return the Proposal security to all Proposers upon the execution of the Contract.

(b) The County may retain the Proposal security if a Proposer who is awarded a Contract fails to promptly and properly execute the Contract. For purposes of this paragraph, prompt and proper execution of the Contract includes all action by a Proposer that is necessary to the formation of a Contract in accordance with the Request for Proposals, including the posting of performance security and the submission of proof of insurance when required by the Request for Proposals. If Contract Negotiations or competitive Negotiations are conducted, the failure, prior to Award, of the County and a Proposer to reach agreement does not constitute grounds for the retention of Proposal security.

(5) Public notice of the Request for Proposals shall be given in the same manner as provided for public notice of invitations to bid in Rule 47-0300.

(6) Notwithstanding ORS 192.410 to 192.505, Proposals may be opened in a manner to avoid disclosure of contents to competing Proposers during, when applicable, the process of negotiation, but the CPCA Manager shall record and make available the identity of all Proposers as part of the County's public records from and after the Opening of the Proposals. Notwithstanding ORS 192.410 to 192.505, Proposals are not required to be open for public inspection until after the notice of intent to Award a Contract is issued. The fact that Proposals are opened at a meeting, as defined in ORS 192.610, does not make their contents subject to disclosure, regardless of whether the public body opening the Proposals fails to give notice of or provide for an executive session for the purpose of opening Proposals.

(a) Notwithstanding any requirement to make Proposals open to public inspection after the County's issuance of notice of intent to Award a Contract, the County may withhold from disclosure to the public materials included in a Proposal that are exempt or conditionally exempt from disclosure under ORS 192.501 or 192.502.

(b) If a Request for Proposals is canceled under ORS 279B.100 after Proposals are received, the County may return a Proposal to the Proposer that made the Proposal. The Department shall keep a list of returned Proposals in the file for the solicitation.

(7) As provided in the Request for Proposals or in Written Addenda issued thereunder, the Department may conduct site tours, demonstrations, individual or group Discussions and other informational activities with Proposers before or after the opening of Proposals for the purpose of clarification to ensure full understanding of, and responsiveness to, the Solicitation requirements or to consider and respond to requests for modifications of the Proposal requirements. The Department shall use procedures designed to accord Proposers fair and equal treatment with respect to any opportunity for Discussion and revision of Proposals.

(a) For purposes of evaluation, when provided for in the Request for Proposals, the Department may employ methods of contractor selection that include, but are not limited to:

(A) An Award or awards based solely on the ranking of Proposals;

(B) Discussions leading to best and final offers, in which the Department may not disclose private Discussions leading to best and final offers;

(C) Discussions leading to best and final offers, in which the Department may not disclose information derived from Proposals submitted by competing Proposers;

(D) Serial Negotiations, beginning with the highest ranked Proposer;

(E) Competitive simultaneous Negotiations;

(F) Multiple-tiered competition designed to identify, at each level, a class of Proposers that fall within a Competitive Range or to otherwise eliminate from consideration a class of lower ranked Proposers;

(G) A multistep Request for Proposals requesting the submission of unpriced technical submittals, and then later issuing a Request for Proposals limited to the Proposers whose technical submittals the Department had determined to be qualified under the criteria set forth in the initial Request for Proposals; or

(H) Any combination of methods described in this paragraph,

(b) Revisions of Proposals may be permitted after the submission of Proposals and before Award for the purpose of obtaining best offers or best and final offers.

(c) After the opening of Proposals, the CPCA Manager may issue or electronically post an Addendum to the Request for Proposals that modifies the criteria, rating process and procedure for any tier of competition before the start of the tier to which the Addendum applies. The CPCA Manager shall send an Addendum that is issued by a method other than electronic posting to all Proposers who are eligible to compete under the Addendum. The CPCA Manager shall issue or post the Addendum at least five (5) Days before the start of the subject tier of competition or as otherwise determined by the Department to be adequate to allow eligible Proposers to prepare for the competition in accordance with these Rules.

(8) Any Solicitation or Procurement described in a Solicitation may be canceled, rejected, delayed or suspended as provided in Rule 47-0660.

(9) The Solicitation shall describe the methods by which the agency will make the results of each tier of competitive evaluation available to the Proposers who competed in the tier. The Solicitation shall include a description of the manner in which the Proposers who are eliminated from further competition may protest or otherwise object to the County's decision.

(10) The CPCA Manager shall issue or electronically post the notice of intent to Award described in Rule 47-0300 to each Proposer who was evaluated in the final competitive tier.

(11) If a Contract is awarded, the Contract shall be awarded to the Responsible Proposer whose Proposal the County determines in Writing to be the most Advantageous to the County based on the evaluation process and evaluation factors described in the Request for Proposals, any applicable preferences described in Rules 46-0310 and 46-0320 and, when applicable, the outcome of any Negotiations authorized by the Request for Proposals. Other factors may not be used in the evaluation. When the Request for Proposals specifies or authorizes the Award of multiple Public Contracts, the County shall Award Public Contracts to the Responsible Proposers who qualify for the Award of a Contract under the terms of the Request for Proposals.

(12) No terms and conditions shall be included in the Contract that were expressly rejected in a solicitation protest.

(13) For multiple Award Contracts, the County may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060

47-0261 Procedures for Competitive Range, Multi-tiered and Multistep Proposals

(1) **Generally.** A Department may procure Goods or Services employing any combination of the methods of Contractor selection as set forth in Rule 47-0260. In addition to the procedures set forth in Rules 47-0300 to 47-0490 for methods of Contractor selection a Contracting Agency may provide for a multi-tiered or multi-step selection process that permits award to the highest ranked Proposer at any tier or step, calls for the establishment of a Competitive Range or permits either serial or competitive simultaneous Discussions or Negotiations, with one or more Proposers. A Department may employ one or more of the procedures set forth in this Rule for Competitive Range, multi-tiered and multistep Proposals.

(2) **Solicitation Protest.** The Solicitation Document shall provide that prior to the initial Closing, there shall be opportunity to protest the Solicitation under Rule 47-0720.

(3) **Addenda Protest.** The Solicitation Document may provide for an opportunity to protest, pursuant to Rule 47-0430, any Addenda issued pursuant to 47-0260.

(4) **Exclusion Protest.** The Solicitation Document may provide that, before the notice of intent to Award there shall be an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multistep sealed Proposals as set forth in 47-0720.

(5) **Administrative Remedy.** Proposers may submit a protest to any Addenda or to any action by the County that has the effect of excluding the Proposer from subsequent phases of a multiple-tiered or multistep Request for Proposals to the extent such protests are provided for in the Solicitation Document. Failure to so protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the County.

(6) **Award Protest.** The Solicitation Document shall provide an opportunity to protest the intent to Award a Contract pursuant to Rule 47-0740. An Affected Proposer may protest, for any of the bases set forth in Rule 47-0720, its exclusion from the Competitive Range or any phase of a multi-tiered or multistep sealed Proposal, or an Addendum issued following initial Closing, if the County did not previously provide Proposers the opportunity to protest such exclusion or Addendum.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060

47-0262 Competitive Range, Discussions and Negotiations for Multi-tiered or Multistep Proposals

(1) **Competitive Range.** When the Solicitation process conducted pursuant to Rule 47-0260 calls for the establishment of a Competitive Range at any stage in the Procurement process, it shall do so as follows:

(a) **Determining Competitive Range.**

(A) The Department shall establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Department shall determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, a Department may establish a Competitive Range of all Proposers to enter into discussions with Proposers for the purpose of correcting deficiencies in Proposals under subsection 2 of this rule.

(B) The Department may increase or decrease the number of Proposers in the Competitive Range if the Department's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater or less than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the most Advantageous Proposer.

(b) **Protesting Competitive Range.** CPCA shall provide written notice to all Proposers identifying Proposers in the Competitive Range. The Solicitation Document may provide an opportunity for Proposers excluded from the Competitive Range to protest the Department's evaluation and determination of the Competitive Range in accordance with Rule 47-0720.

(c) **Intent to Award; Discuss or Negotiate.** After determination of the Competitive Range and after any protest period provided in accordance with subsection (1)(b) expires, or after the County has provided a final response to any protest, whichever date is later, the County may either:

(A) Provide written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.

(i) An unsuccessful Proposer may protest the County's intent to Award in accordance with Rule 47-0740.

(ii) After the protest period provided in accordance with Rule 47-0740 expires, or after the County has provided a final response to any protest, whichever date is later, the Department shall commence Negotiations in accordance with subsection (3) of this Rule with the highest-ranked Proposer in the Competitive Range; or

(B) Engage in Discussions with Proposers in the Competitive Range and accept revised Proposals from them as set forth in subsection (2) of this Rule and following such Discussions and receipt and evaluation of revised Proposals, conduct Negotiations as set forth in subsection (3) of this Rule with the Proposers in the Competitive Range.

(2) Discussions; Revised Proposals. If the Department chooses to enter into Discussions with and receive best and final Offers (See, subsection (4) of this Rule below) from all Proposers submitting Responsive Proposals or all Proposers in the Competitive Range (collectively "eligible Proposers"), the Department shall proceed as follows:

(a) **Initiating Discussions.** The Department shall initiate oral or Written Discussions with all eligible Proposers regarding their Proposals with respect to the provisions of the RFP that the Department identified in the RFP as the subject of Discussions. The Department may conduct Discussions for the following purposes:

(A) Informing potentially eligible Proposers of deficiencies in their initial Proposals;

(B) Notifying eligible Proposers of parts of their Proposals for which the Department would like additional information; or

(C) Otherwise allowing eligible Proposers to develop revised Proposals that will allow the Department to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) **Conducting Discussions.** The Department may conduct Discussions with each eligible Proposer necessary to fulfill the purposes of this subsection (2), but need not conduct the same amount of Discussions with each eligible Proposer. The Department may terminate Discussions with any eligible Proposer at any time. However, the Department shall offer all eligible Proposers the same opportunity to discuss their Proposals with the Department before notice is given by the CPCA Manager to eligible Proposers of the date and time pursuant to subsection (4) that best and final Proposals will be due.

(A) In conducting Discussions, the Department:

(i) Shall treat all eligible Proposers fairly and shall not favor any eligible proposer over another;

(ii) Shall not disclose other eligible Proposer's Proposals or Discussions.

(iii) May adjust the evaluation of a Proposal as a result of a Discussion under this section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the Discussions provided the changes are within the scope of the Request for Proposals.

(B) At any time during the time allowed for Discussions, the Department may:

(i) Continue Discussions with a particular eligible Proposer;

(ii) Terminate Discussions with a particular eligible Proposer and continue Discussions with other eligible Proposers; or

(iii) Conclude Discussions with all remaining eligible Proposers.

(C) Upon conclusion of Discussions with the remaining eligible Proposers, CPCA shall provide notice pursuant to subsection (4) of this Rule to the eligible Proposers requesting best and final Offers.

(3) Negotiations.

(a) **Initiating Negotiations.** The Department may commence serial Negotiations with the highest-ranked eligible Proposers or commence simultaneous Negotiations with all eligible Proposers as follows:

(A) After initial determination of which Proposals are Responsive; or

(B) After initial determination of the Competitive Range in accordance with subsection (1) of this Rule; or

(C) After conclusion of Discussions with all eligible Proposers and evaluation of revised Proposals (See subsection (2) of this Rule).

(b) **Conducting Negotiations.**

(A) **Scope**. The Department may negotiate:

(i) The statement of Work;

(ii) The Contract Price as it is affected by negotiating the statement of Work; and

(iii) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto. Accordingly, Proposers shall not submit, and the Department shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto.

(B) **Terminating Negotiations.** At any time during Discussions or Negotiations that the Department conducts in accordance with subsections (2) or (3) of this Rule, the Department may terminate Discussions or Negotiations with the highest-ranked Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the Department reasonably believes that:

(i) The eligible Proposer is not discussing or negotiating in good faith; or

(ii) Further Discussions or Negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(c) **Continuing Serial Negotiations.** If the Department is conducting serial Negotiations and the Department terminates Negotiations with an eligible Proposer in accordance with paragraph 3(b)(B) of this Rule, the Department may then commence Negotiations with the next highest scoring eligible Proposer and continue the process described in subsection (3) of this Rule until the Department has either:

(A) Determined to recommend Award of the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or

(B) Completed one round of Discussions or Negotiations with all eligible Proposers unless the Department provided for more than one round of Discussions or Negotiations in the Request for Proposals, in which case the Department has completed all rounds of Discussions or Negotiations.

(d) **Competitive Simultaneous Negotiations.** If the Department chooses to conduct competitive Negotiations, the Department may negotiate simultaneously with competing eligible Proposers. The Department:

(A) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(B) May disclose other eligible Proposer's Proposals or the substance of Negotiations with other eligible Proposers only if the CPCA Manager notifies all of the eligible Proposers with whom the Department will engage in Negotiations of the Department's intent to disclose before engaging in Negotiations with any eligible Proposer.

(e) Any oral modification of a Proposal resulting from Negotiations under this subsection (3) shall be reduced to Writing by the Proposer.

(4) Best and Final Offers. If best and final Offers are required, CPCA shall establish a common date and time by which eligible Proposers shall submit best and final Offers. Best and final Offers shall be submitted only once; provided, however, the Department may make a Written determination that it is in the Department's best interest to conduct additional Discussions, Negotiations or change the Department's requirements and require another submission of best and final Offers. Otherwise, no Discussion of or changes in the best and final Offers shall be allowed prior to Award. eligible Proposers shall also be informed if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offer will be construed as their best and final Offer. The Department shall evaluate Offers as modified by the best and final Offer. The Department shall conduct evaluations as described in Rule 47-0600. The Department shall not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060

47-0263 Multistep Sealed Proposals

(1) Generally. A Department may procure Goods or Services by using multistep competitive sealed Proposals pursuant to Rule 47-0260.

(2) Phased Process. Multistep sealed Proposals is a phased Procurement process that seeks necessary information or un-priced technical Proposals in the initial phase and invites Proposers who submitted technically qualified Proposals in the initial phase to submit competitive sealed price Proposals in the final phase. The Contract shall be Awarded to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the final phase. If time is a factor, the Solicitation Document may require Proposers to submit a separate sealed price Proposal during the initial phase to be opened after the technical evaluation.

(3) **Public Notice.** Whenever multistep sealed Proposals are used, public notice for the first phase shall be given in accordance with Rule 47-0300. Public notice is not required for the subsequent phases. However, CPCA shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to Rule 47-0720.

(4) **Procedure for Phase One of Multistep Sealed Proposals.**

(a) **Form.** Multistep sealed Proposals shall be initiated by the issuance of a Request for Proposal in the form and manner required for competitive sealed Proposals except as provided in this Rule. In addition to the requirements set forth in Rule 47-0260, the multistep Request for Proposal shall state:

(A) That un-priced technical Proposals are requested;

(B) Whether price Proposals are to be submitted at the same time as un-priced technical Proposals; that if they are, such price Proposals shall be submitted in a separate sealed envelope;

(C) That the Solicitation is a multistep sealed Proposal Procurement, and that priced Proposals will be considered only in the subsequent phases from those Proposers whose un-priced technical Proposals are found qualified in the first phase;

(D) The criteria to be used in the evaluation of un-priced technical Proposals;

(E) That the Department, to the extent that it finds necessary, may conduct oral or Written Discussions of the un-priced technical Proposals;

(F) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposal.

(G) Whether Proposers excluded from subsequent phases have a right to protest the exclusion. Such information can be given or changed through Addenda.

(b) **Addenda to the Request for Proposal.** After receipt of un-priced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted un-priced technical Proposals.

(c) **Receipt and Handling of Un-priced Technical Proposals.** Un-priced technical Proposals need not be opened publicly.

(d) **Evaluation of Un-Priced Technical Proposals.** Un-priced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposal. Un-priced technical Proposals shall be categorized as:

(A) Qualified;

(B) Potentially qualified; that is, reasonably susceptible of being made qualified; or

(C) Unqualified. CPCA shall record in Writing the basis for determining a Proposal unqualified and make it part of the Procurement File. The Department may initiate phase two of the procedure if, in the Department's opinion, there are sufficient qualified or potentially qualified un-priced technical Proposals to assure effective price competition in the second phase without technical Discussions. If the Department finds that such is not the case, CPCA shall issue an Addendum to the Request for Proposal or engage in technical Discussions as set forth in subsection 4(e).

(e) **Discussion of Un-priced Technical Proposals.** The Department may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal. During the course of such Discussions, the Department shall not disclose any information derived from one un-priced technical Proposal to any other Proposer. Once Discussions are begun, any Proposer who has not been notified that its Proposal has been finally found unqualified may submit supplemental information amending its technical Proposal at any time until the Closing date established in Solicitation Document. Such submission may be made at the request of the Department or upon the Proposer's own initiative.

(f) **Notice of Unqualified Un-priced Technical Proposal.** When the County determines a Proposer's un-priced technical Proposal to be unqualified, such Proposer shall not be afforded an additional opportunity to supplement its technical Proposals.

(g) **Mistakes During Multistep Sealed Proposals.** Mistakes may be corrected or Proposals may be withdrawn during phase one:

(A) Before un-priced technical Proposals are considered;

(B) After any Discussions have commenced under subsection 4(e) of this Rule;

(C) When responding to any Addenda to the Request for Proposal; or

(D) In accordance with 47-0470.

(5) Procedure for Subsequent Phases.

(a) **Initiation.** Upon the completion of phase one, CPCA shall either:

(A) Open price Proposals submitted in phase one (if price Proposals were required to be submitted) from Proposers whose un-priced technical Proposals were found to be qualified; or

(B) If price Proposals have not been submitted, technical Discussions have been held, or Addenda to the Request for Proposals have been issued, invite each qualified Proposer to submit price Proposals.

(b) **Conduct.** Phase two shall be conducted as any other competitive sealed Proposal Solicitation except:

(A) As specifically set forth in this Rule; and

(B) No public notice need be given of the request to submit price Proposals because such notice was previously given.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060

47-0265 Small Procurements

(1) For Procurements of Goods or Services less than or equal to $5,000 a Department may Award a Contract as a small Procurement in accordance with this Rule. A Procurement may not be artificially divided or fragmented so as to constitute a small Procurement under this section.

(2) If the Goods or services are available from a QRF, they shall be purchased as provided in Division 55 of these Rules and not as provided in this Rule.

(3) Small Procurements are exempt from Competitive Solicitation; however, Departments shall where practicable, obtain Quotes as provided in Rule 47-0270.

(4) A Department may amend a Public Contract Awarded as a small Procurement in accordance 47-0800 (3), but the cumulative amendments shall not increase the total Contract Price to greater than $6,000. Any amendment that causes a Small Procurement to exceed $6,000 will be treated as an unauthorized purchase and shall be subject to the requirements of PCRB Rule 20-0030.

Stat. Auth.: ORS 279A.065 & ORS 279B.065
Stats. Implemented: ORS 279B.065

47-0270 Intermediate Procurements

(1) **Generally.** For Procurements of Goods or Services greater than $5000 and less than or equal to $150,000, a Department may Award a Contract as an Intermediate Procurement.

(2) QRFs. If the Goods or services are available from a QRF, they shall be purchased as provided in Division 55 of these Rules and not as provided in this Rule.

(3) Fragmentation. A Procurement may not be artificially divided or fragmented so as to constitute an Intermediate Procurement under this section.

(4) Negotiations. A Department may negotiate with a prospective Contractor who offers to provide Goods or Services in response to an intermediate Procurement to clarify its quote or Offer or to effect modifications that will make the quote or Offer more Advantageous to the County.

(5) Award. If a Contract is awarded, the Department shall Award the Contract to the responsive, Responsible Offeror who provides the lowest Quote, or if criteria other than price are to be considered, whose Proposal is the highest scoring Proposal. If the Department intends to consider criteria other than price, the Solicitation shall state the criteria that will be considered in making the Award. Criteria may include experience, expertise, product functionality, suitability for a particular purpose and Contractor responsibility under ORS 279B.110.

(6) Amendments. A Department may amend a Public Contract Awarded as an Intermediate Procurement in accordance with 47-0800(3), but the cumulative amendments shall not increase the total Contract Price to a sum that is greater than $150,000. Increases in excess of this limit shall be approved by the Board prior to authorization for the additional Goods or services.

(7) Procedure for Solicitation of Intermediate Procurements. For Procurements for Goods or services greater than $5000 and less than or equal to $150,000 Departments may seek informally solicited price Quotes or competitive proposal Quotes. Solicitations and Offers for Intermediate Procurements shall be in Writing and may be electronic, by Facsimile transmission or by mail, except that Solicitations and Offers for Goods or services may be oral where the Contract Award is based solely on price and is equal to or less than $75,000. The requirements for an Intermediate Procurement are as follows:

(a) A minimum of three (3) Quotes shall be solicited from vendors who can reasonably be expected to provide the required Goods or services. One of every three (3) Quotes solicited shall be from an MBE, WBE or ESB Contractor, if available.

(b) The Department shall make a Written record of all vendors from whom Quotes were solicited and the amount of the Quotes received. If three (3) Quotes are not available, a lesser number will suffice provided a Written record is made of the effort to obtain three (3) Quotes.

(8) Price Agreements. A Price Agreement solicited pursuant to subsection (6) or subsection (8) (b) may be used for Contracts up to five years duration and for a maximum total contract amount of $150,000 or if procured under subsection (8) (a) may be used for Contracts up to five years duration and for a maximum total contract amount of $75,000.

(9) Solicitations for Contracts for Minor Alteration, Ordinary Repair or Maintenance Necessary to Preserve a Public Improvement.

(a) Solicitations for Contracts for minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement between $5,000 and $75,000. Departments may Award Public Contracts between $5,000 and $75,000 for minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement as an Intermediate Procurement if the Contract is for a single project and is not a component of or related to any other project, and the requirements of this subsection are met. When the amount of the Contract is more than $5,000 but equal to or less than $75,000, Quotes shall be solicited in the following manner:

(A) A minimum of three (3) Quotes shall be solicited from vendors who can reasonably be expected to provide a Quote. If three (3) Quotes are not available, a lesser number will suffice provided a Written record is made of the effort to obtain the Quotes.

(B) Of the three (3) Quotes provided for in subsection (A) above, one shall be obtained from an MBE, one from a WBE, and one from an ESB. More than three (3) Quotes may be solicited providing that the additional Quotes are solicited from MBEs, WBEs and ESBs. Additional Quotes shall not be solicited except as provided in the following subsection.

(C) If a Quote is not available in a particular category from an MBE, WBE, or ESB Contractor certified by the State of Oregon for the type of Work required, an additional Quote shall be solicited from one of the other categories. If three (3) Quotes are not available from all of the categories combined, the remaining Quote(s) may be solicited from any other Contractor. A Quote shall be "not available" in a specific category (MBE,WBE, or ESB) if all contractors certified by the State in that category and located within 75 miles from the place where the Contract is to be performed, have been advised of the contracting opportunity, have been given a reasonable period of time under the circumstances to make a Quote, and have failed to provide a Quote within the time specified.

(D) If three (3) Quotes are not reasonably available from all sources, the Department shall make a written record of the effort made to obtain those Quotes.

(b) Solicitations for Contracts for minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement between $75,000 and $150,000. Solicitations for Contracts for minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement between $75,000 and $150,000 shall be done in accordance with subsections (1) to (6), (9) and (10) of this Rule.

(10) **Written Record.** The Department shall make a Written record in the Procurement File of all vendors from whom Quotes were solicited and the amount of the Quotes received.

(11) **BOLI Notification.** The Department shall provide notification of Award to BOLI as required by ORS 279C.835.

(12) **Contract Requirements.** When the Contract is for a minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement, the Department shall comply with:

(a) The prevailing wage provisions of ORS 279C.800 to 279C.870, including when applicable;

(A) If no federal funds are being used to fund the work, the wage rates established under ORS 279C.815(2)(a) shall be attached to the contract.

(B) If federal funds are being used to fund the work, the wage rates established under ORS 279C.815(2)(b) shall be attached to the contract.

(b) The performance bond, payment bond and BOLI Public Works bond requirements of ORS 279C.380 and 279C.836 (see Rules 49-0460 and 49-0815);

(c) The contractor registration requirements of ORS 701; and

(d) Any other law applicable to such a Contract.

(13) **Annual Report.** The CPCA Manager shall prepare a report to the Board on an annual basis which provides an evaluation of the procedures for obtaining Quotes in subsection (8). The annual report shall include a recommendation whether the program should be continued. If the CPCA Manager recommends that the Program be continued, the recommendation shall include any proposed improvements to the Program.

Stat. Auth.: ORS 279A.065 & ORS 279B.070
Stats. Implemented: ORS 279B.070

47-0275 Sole-Source Procurements

(1) The County may Award a Contract for Goods or services without competition when it is determined that the Goods or services, or class of Goods or services, are available from only one source. Such determination shall be made by the CPCA Manager for Procurements under $150,000. For all other Procurements the determination shall be made by the Board. The determination shall be made based on Written findings that shall include, where applicable, findings:

(a) That the efficient utilization of existing Goods requires the acquisition of compatible Goods or services;

(b) That the Goods or services required for the exchange of software or data with other public or private agencies are available from only one source;

(c) That the Goods or services are for use in a pilot or an experimental project; or

(d) Other findings that support the conclusion that the Goods or services are available from only one source.

(2) To the extent reasonably practical, the Department shall negotiate with the sole source to obtain Contract terms Advantageous to the County.

(3) Except for Contracts specifically exempted by these Rules, a Department shall give public notice on all contracts in excess of $75,000 of the County's determination that the Goods or Services or class of Goods or Services are available from only one source as set forth in Rule 47-0300(1). The public notice shall describe the Goods or Services to be acquired by a Sole-Source Procurement identify the prospective Contractor and include the date, time and place that protests are due. The notice shall be given at least seven (7) Days before the Award of the Contract to allow for protests pursuant to Rule 47-0710, unless the CPCA Manager gives prior Written approval to reduce the number of Days based upon extraordinary circumstances that do not meet the criteria for an Emergency Procurement pursuant to Rule 47-0280.

(4) An Affected Person may protest, in accordance with Rule 47-0710, the determination that the Goods or Services or class of Goods or Services are available from only one source.

(5) Unless unusual circumstances warrant a longer exemption period, this type of exemption will not be approved for more than two (2) years.

(6) Departments shall not select a Sole-Source Procurement to avoid a competitive Procurement.

Stat. Auth.: ORS 279A.065 & ORS 279B.075
Stats. Implemented: ORS 279B.075

47-0280 Emergency Procurements/Contracts

(1) Pursuant to the requirements of this Rule, the County, may enter into a Public Contract for any amount without competitive Solicitation if an Emergency exists. Emergency means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that requires prompt execution of a Contract to remedy the condition.

(2) A Department seeking authority to enter into an Emergency Contract shall:

(a) Make a Written declaration of Emergency in the Procurement File, signed by the Department Director, which includes findings describing the Emergency circumstances that require the prompt performance of the Contract, stating the anticipated harm from failure to establish the Contract on an expedited basis; and

(b) Seek competition to the extent reasonable and appropriate under the circumstances and document the method used for selection of the particular Contractor. If conducting a procurement for construction services that are not public improvements, CPCA shall set a solicitation time period that CPCA determines to be reasonable under the emergency circumstances, and CPCA may issue written and oral requests for offers; and

(c) Record in the Procurement File the measures taken under subsection (2)(b) of this section to encourage competition, the amounts of the Bids, Quotes or Proposals obtained, and the reason for selecting the Contractor; and

(d) Submit the information and documents described in subsections (2)(a), (2)(b) and (2)(c) above to the Chair with notice to the CPCA Manager and obtain authorization from the Chair to enter into the Contract.

(3) The Chair is authorized to declare the existence of an Emergency and to authorize execution of contracts in any amount required by Emergency circumstances, and may authorize direct appointments without competition in cases of extreme necessity.

(4) Although no dollar limitation applies to Emergency Contracts the scope of the Contract shall be limited to only that Work that is essential to remedy the conditions causing the Emergency as described in the declaration.

(5) Any Contract awarded under this Rule shall be awarded within 60 Days following declaration of the Emergency unless an extension is granted by the Chair.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.080

47-0285 Special Procurements

(1) As used in this Rule and Rules 47-0700 and 47-0730:

(a) "Special Procurement" means, unless the context requires otherwise, a Class Special Procurement, a Contract-Specific Special Procurement or both. A Special Procurement allows the County to custom-design any contracting approach it determines will meet its procurement needs.

(b) "Class Special Procurement" means a contracting procedure that differs from the procedures described in these Rules and is for the purpose of entering into a series of contracts over time for the acquisition of a specified class of Goods or services.

(c) "Contract-Specific Special Procurement" means a contracting procedure that differs from the procedures described in these Rules and is for the purpose of entering into a single Contract or a number of related contracts for the acquisition of specified Goods or services on a one-time basis or for a single project.

(2) To seek approval of a Special Procurement, a Department shall submit a Written request to the CPCA Manager, that describes the proposed contracting procedure, the Goods or services or the class of Goods or services to be acquired through the Special Procurement and the circumstances that justify the use of a Special Procurement under the standards set forth in subsection (3) of this Rule. The alternative process shall be clearly described and complete, and shall include a description of the Supplies and Services to be acquired, provisions for advertisement, a proposed Solicitation process, including the criteria for selection, and the proposed Contract document. The CPCA Manager has the authority to approve, deny or refer to the Board Special Procurement requests up to $150,000. Special Procurement requests in excess of $150,000 shall be approved by the Board. The CPCA Manager or the Board may require any additional information deemed necessary to evaluate the request for approval of the Special Procurement.

(3) The CPCA Manager or the Board may approve a Special Procurement if the CPCA Manager or the Board finds that a Written request submitted under subsection (2) of this section demonstrates that the use of a Special Procurement as described in the request, or an alternative procedure prescribed by the CPCA Manager or the Board, will:

(a) Be unlikely to encourage favoritism in the awarding of Public Contracts or to substantially diminish competition for Public Contracts; and

(b) Result in substantial cost savings to the County or to the public; or

(c) Otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements of these Rules.

(4) The CPCA Manager shall give public notice, and notice to any identified Affected Persons, of the approval of Special Procurements that are in excess of $150,000 at least seven (7) Days prior to Award of the Contract. Notice shall be given in a manner similar to public notice of competitive sealed Bids under Rule 47-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement.

(5) If a Contract is awarded through a Special Procurement, the County shall Award the Contract to the Offeror whose Offer the County determines in Writing to be the most Advantageous to the County.

(6) When the CPCA Manager or the Board approves a Class Special Procurement under this section, the County may Award contracts to acquire Goods or services within the class of Goods or services in accordance with the terms of the CPCA Manager's or the Board's approval without making a subsequent request for a Special Procurement.

(7) **Protest.** An Affected Person may only protest the approval of Special Procurements in excess of $150,000. Protests shall be in accordance with Rule 47-0700.

(8) Purchases pursuant to the Class Special Procurements described in Rule 47-0288 are authorized. The procedures in this Rule shall not apply to the Class Special Procurements authorized in Rule 47-0288.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.085

47-0288 Special Procurements Authorized by Rule

(1) Brand Names or Products, "or Equal," Single Seller and Sole Source.

(a) **Authorization.** Departments are authorized to procure products in accordance with the following procedure:

(b) **Definitions.** "Procurement of Brand Name 'or Equal' Products" means the Procurement of a product after specifying the registered Brand name of the product or requiring the same Specifications of the Brand Name product.

(c) **Requirements.**

(A) **Specifications.** Solicitation Specifications for Public Contracts shall not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in subsections (1)(c)(A)(i) and (ii) of this Rule.

(i) **"Or Equal" Specification.** A Department may specify a particular brand name, make or product suffixed by "or equal", "or approved equal", "or equivalent", "or approved equivalent", or similar language if there is no other practical method of Specification.

(ii) **Specifying a Particular Make or Product.** A Department may specify a brand name, make, or product without an "or equal" or equivalent suffix if there is no other practical method of Specification, after documenting the Procurement File, with the following:

(I) A brief description of the Solicitation(s) to be covered including volume of contemplated future purchases;

(II) The brand name, mark, or product to be specified; and

(III) The reasons the Department is seeking this Procurement method, which shall include at least one of the following findings in the Procurement File:

(aa) It is unlikely that Specification of the brand name, mark or product will encourage favoritism in the Award of the Public Contracts or substantially diminish competition; or

(bb) Specification of the brand name, mark or product would result in substantial cost savings to the Department; or

(cc) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

(B) **Public Notice.** The County shall make a reasonable effort to notify all known suppliers of the specified product and invite such suppliers to submit competitive bids or Proposals; or shall document the Procurement File with findings of current market research to support the determination that the product is available from only one seller. For contracts in excess of $150,000 this requirement shall be satisfied by posting a notice on the CPCA Website for a reasonable time period.

(C) **Purchasing From Sole Source, Single Seller.** A Department may purchase particular Goods or services available from only one source if the Department meets the requirements of Subsection (c) (A) and (B) of this Rule. The Department, prior to purchase, shall submit the Department's findings of current market research which supports the determination that the product or service is available from only one seller or source to the CPCA Manager. The CPCA Manager is authorized to approve the procurement if it does not exceed $150,000. Procurements in excess of $150,000 shall be approved by the Board. Unless unusual circumstances warrant a longer contract period this type of contract will not be approved for longer than two (2) years. The Department's findings shall include:

(i) A brief description of the Contract or Contracts to be covered including volume of contemplated future purchases;

(ii) Description of the product or service to be purchased; and

(iii) The reasons the Department is seeking this Procurement method, which shall include at least one (1) of the following:

(I) Efficient utilization of existing Supplies and Services requires the acquisition of compatible Supplies and Services; or

(II) The required product is data processing equipment which will be used for research where there are requirements for exchange of software and data with other research establishments; or

(III) The particular product is for use in a pilot or an experimental project.

(D) **Single Manufacturer, Multiple Sellers.** The Department may specify a product or service available from only one (1) manufacturer, but available through multiple sellers, if the Department meets the Requirements of Subsection (c)(A) and (B) and the following:

(i) If the total purchase is $5,000 or more but does not exceed $150,000, competitive Quotes shall be obtained and retained in the Procurement File pursuant to the requirements for Intermediate Procurements in Rule 47-0270;

(ii) If the purchase exceeds $150,000, competitive Bids or Proposals shall be solicited in accordance with Rules 47-0255 to 47-0263.

(E) **Single Manufacturer, Multiple Purchases.** If a Department intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed five (5) years, the Department shall so state in the Procurement File, the Solicitation Document, and the public notice described in Subsection (c)(B) of this Rule. Such documentation and public notice constitute sufficient notice as to subsequent purchases. If the total purchase amount is estimated to exceed $150,000, this shall be stated in the advertisement for Bids or Proposals.

(F) **Competitive Solicitation.** If a Department competitively solicits, it shall comply with the Rules for that method of Solicitation pursuant to Rules 47-0255 to 47-0263, 47-0270 and 47-0285.

(2) Advertising Contracts.

(a) **Authorization.** Departments are authorized to procure advertising from newspapers, magazines and other related print media and from radio and television stations and related media without competitive Solicitation.

(b) **Process and Criteria.** Departments shall state in the Procurement File the subsection of this Rule which authorizes the Procurement. Departments shall use competitive methods wherever possible to achieve best value and shall state in the Procurement File the reasons why a competitive process was deemed to be impractical.

(3) Equipment Maintenance, Repair and Overhaul.

(a) **Authorization.** A Department, may enter into a Contract for equipment maintenance, repair or overhaul without competitive Solicitation, subject to the following conditions:

(A) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(B) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one (1) source; and

(C) Written documentation supporting the findings determination in subsections 3(a)(A) or (3)(a)(B) above is obtained and prepared and placed in the Procurement File.

(b) **Process and Criteria.** Departments shall state in the Procurement File the subsection of this Rule which authorizes the Procurement. Departments shall use competitive methods wherever possible to achieve best value and shall state in the Procurement File the reasons why a competitive process was deemed to be impractical.

(4) Contracts for Price Regulated Items.

(a) **Authorization.** A Department may contract for the direct purchase of Goods or services where the rate or price for the Goods or services being purchased is established by federal, state, or local regulatory authority without competitive Solicitation.

(b) **Process and Criteria.** Departments shall state in the Procurement File the subsection of this Rule which authorizes the Procurement. Departments shall use competitive methods wherever possible to achieve best value and shall state in the Procurement File the reasons why a competitive process was deemed to be impractical.

(5) **Investment Contracts.**

(a) **Authorization.** A Department may contract for the investment of public funds or the borrowing of funds by the County when such investment or borrowing is contracted pursuant to statute, ordinance, charter, or constitution without competitive Solicitation.

(b) **Process and Criteria.** Departments shall state in the Procurement File the subsection of this Rule which authorizes the Procurement. Departments shall use competitive methods wherever possible to achieve best value and shall state in the Procurement File the reasons why a competitive process was deemed to be impractical.

(6) **Purchase of Used Personal Property.**

(a) **Authorization.** A Department may purchase used personal property or equipment without Competitive Solicitation if it has determined and documented in the Procurement File that the purchase will (i) be unlikely to encourage favoritism or diminish competition; and (ii) result in substantial cost savings or promote the public interest. "Used personal property or equipment" is property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of the Department purchase. "Used personal property or equipment" generally does not include property or equipment if the Department was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(b) **Process and Criteria.**

(A) For purchases of used personal property or equipment not exceeding $150,000, Departments shall, where feasible, obtain three (3) competitive Quotes, unless the Department has determined and documented that a purchase without obtaining competitive Quotes will result in cost savings to the Department and will not diminish competition or encourage favoritism.

(B) If the total purchase is estimated to exceed $150,000, the Department shall submit a written request to the CPCA Manager for CPCA to solicit quotes and post on the CPCA website prior to making the purchase.

(C) CPCA shall keep a written record of the Quotes received by CPCA. If three (3) Quotes are not available, a written record shall be made of the attempt to obtain Quotes.

(D) Departments or CPCA shall cite in the Procurement File the subsection of this Rule which authorizes the Procurement.

(7) **Reverse Auctions.**

(a) **Process.** A Reverse Auction means a process for the purchase of Supplies and Services by a buyer from the lowest Bidder. The Department as the buyer shall conduct Reverse Auctions by first publishing a Solicitation that describes its requirements, Contract terms and conditions. Then, the Department shall solicit online Bids from all interested Bidders through an Internet-based program. The Solicitation shall set forth a start and

end time for Bids and specify the following type of information to be disclosed to Bidders during the Reverse Auction:

(A) The prices of the other Bidders or the price of the most competitive Bidder;

(B) The rank of each Bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher");

(C) The scores of the Bidders if the Department chooses to use a scoring model that weighs non-price factors in addition to price; or

(D) Any combination of (A), (B) and (C) above.

(b) Before the Reverse Auction commences, Bidders shall be required by the Department to consent to the Contract terms and conditions, either in Writing or by an Internet "click" agreement. The Bidders then compete for the Award of a Contract by offering successively lower prices, informed by the price(s), ranks, and scores, separately or in any combination thereof, disclosed by the Department. The identity of the Bidders shall not be revealed during this process. Only the successively lower price(s), ranks, scores and related details, separately or in any combination thereof, will be revealed to the participants. The Department may cancel this Solicitation if it is in the County's best interest. At the end of this Bidding process, the Contract shall be awarded to the lowest Responsible Bidder or in the case of multiple awards, lowest Responsible Bidders. This process allows the Department to test and determine the suitability of the Goods and services before making the Award. The Department shall comply with the following procedures for this type of Solicitation:

(A) **Public Notice.** The Department shall disclose the Reverse Auction process in the Solicitation Documents. The Department shall give notices of the price(s) offered, rank(s), score(s) and related details to the initial Bidders as described in the Solicitation Document. If the purchase exceeds $150,000 the CPCA Manager shall issue a Notice of Intent to Award. The notice shall be issued at least seven (7) Days prior to making the Award.

(B) **Prequalification.** For each Solicitation, on a case-by-case basis, the Department may determine whether prequalification of suppliers is needed. If prequalification is used, the Department shall prequalify suppliers and provide an appeal process in accordance with these Rules.

(C) **Authorization.** The Department shall cite in the procurement file the subsection of this rule which authorizes the Procurement.

(8) Hazardous Material Removal; Oil Cleanup

(a) **Authorization.** A Department may enter into Public Contracts without competitive Solicitation when ordered to clean up oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS Chapter 466, and such DEQ order necessitates the prompt establishment and performance of the Contract in order to comply with the statutes regarding spill or release of oil or hazardous material that have created an Emergency condition.

(b) **Process and Criteria.** Departments shall state in the Procurement File the subsection of this Rule which authorizes the Procurement. Departments shall use competitive methods wherever possible to achieve best value and shall state in the Procurement File the reasons why a competitive process was deemed to be impractical. Departments shall document in the Procurement File the circumstances requiring cleanup or a copy of the

DEQ order ordering such cleanup. Departments shall not contract for such services pursuant to this Rule in the absence of an order from the Department of Environmental Quality to clean up a site with a time limitation that would not permit hiring a Contractor as otherwise required by these Rules.

(9) Rating Agency Contracts.

(a) **Authorization.** The County may purchase the services of Moody's Investors Service, Standard and Poors or similar rating agencies without competitive solicitation.

(b) **Process and Criteria.** Departments shall state in the Procurement File the subsection of this Rule which authorizes the Procurement.

(10) Library Databases, Interactive Computer Services and Circulation Materials

(a) **Authorization.** Departments may purchase databases, interactive computer services and circulation materials such as books, videos, DVDs, tapes and CDs for Multnomah County Libraries without competitive solicitation.

(b) **Process and Criteria.** Departments shall state in the Procurement File the subsection of this Rule which authorizes the Procurement. Departments shall use competitive methods wherever possible to achieve best value and shall state in the Procurement File the reasons why a competitive process was deemed to be impractical.

(11) Periodicals.

(a) **Authorization.** Departments may purchase subscriptions for periodicals, including journals, magazines and similar publications without competitive Solicitation.

(b) **Process and Criteria.** Departments shall state in the Procurement File the subsection of this Rule which authorizes the Procurement. Departments shall use competitive methods wherever possible to achieve best value and shall state in the Procurement File the reasons why a competitive process was deemed to be impractical.

(12) Institutional Commissaries and Sheriff's Inmate and Juvenile Detainee Welfare Funds

(a) **Authorization.** Institutional and residential commissaries and Sheriff's Inmate and Juvenile Detainee Welfare Funds may make purchases using these funds.

(b) **Process and Criteria.** Purchases using these funds shall be made based upon Written policies and procedures approved by the CPCA Manager.

(13) Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt

(a) **Authorization.** Departments may purchase gasoline, diesel fuel, heating oil, lubricants and asphalt using the Intermediate Procurement process regardless of the dollar amount of the purchase.

(b) **Process and Criteria.** Departments shall state in the Procurement File the subsection of this Rule which authorizes the Procurement. Purchases shall be made subject to the following conditions:

(A) The Department follows the Intermediate Procurement process in accordance with Rule 47-0270;

(B) The Department makes its purchases from the least expensive source.

(14) Ballots, Ballot Pages and Ballot Cards.

(a) **Authorization.** The County may contract for the printing of ballots without competitive Solicitation.

(b) **Process and Criteria.** Departments shall state in the Procurement File the subsection of this Rule which authorizes the Procurement.

(15) Undercover Vehicles

(a) **Authorization.** The Sheriff's Office may purchase vehicles for use for undercover operations without competitive Solicitation.

(b) **Process and Criteria.** The Sheriff's Office shall state in the Procurement File the subsection of this Rule which authorizes the Procurement. The Sheriff's Office shall use competitive methods wherever possible to achieve best value and shall state in the Procurement File the reasons why a competitive process was deemed to be impractical.

(16) Copyrighted Materials

(a) **Authorization.** A Department may purchase copyrighted materials without competitive Solicitation if there is only one (1) supplier available for such Goods. Examples of copyrighted materials that may be subject to this subsection are textbooks, workbooks, curriculum kits, reference materials, audio and visual media, and software which is available only from the manufacturer or developer.

(b) **Process and Criteria.** Departments shall state in the Procurement File the subsection of this Rule which authorizes the Procurement.

(17) Software and Hardware Maintenance and Upgrades.

(a) **Authorization.** A Department may enter into a Contract and may renew existing Contracts for proprietary information technology and telecommunications hardware or software maintenance and upgrades without Competitive Solicitation where these services are available from only one source.

(b) **Process and Criteria.** Departments shall state in the Procurement File the subsection of this Rule which authorizes the Procurement. Departments shall state in the Procurement File the facts upon which the Department determined that maintenance and upgrades were available from only one source.

(18) Direct Purchase from Manufacturer.

(a) **Authorization.** A Department may purchase Goods directly from the manufacturer without competitive solicitation if the price from the manufacturer is less than that offered by distributors.

(b) **Process and Criteria.** The Department shall set forth in Writing the findings supporting the determination of lowest cost and cite the subsection of this rule which authorizes this procurement in the Procurement File.

(19) Service Monopoly.

(a) **Authorization.** The County may enter into public contracts without competitive solicitation when work is to be completed by a utility or other entity who has been granted a monopoly for services for a specific area or provision of a type of service and

by agreement the utility or entity is either entitled to or required to perform the required work.

(b) **Process and Criteria.** Departments shall state in the Procurement File the subsection of the Rule which authorizes the Procurement. Departments shall identify in the Procurement File the provisions of the agreement with the utility or entity that entitle or require the entity to perform the required work.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070
Stats. Implemented: ORS 279B.085

DIVISION 47 PROCUREMENT PROCESS

47-0300 Public Notice of Solicitation Documents

(1) **Notice of Solicitation Documents.** Public notice of Solicitations by electronic means is likely to be cost-effective. Therefore, public notice of every Solicitation Document shall be given in accordance with subsection (2) of this Rule. The CPCA Manager may give additional notice using any method appropriate to foster and promote competition, including:

(a) Mailing or e-mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in County Procurements;

(b) Placing notice on the State of Oregon Electronic Procurement System (ORPIN); or

(c) Publication in a newspaper of general circulation in the County and in as many other publications as may be appropriate.

(2) **Notice and Advertising.** Every notice and advertisement of a Solicitation Document shall be published on the CPCA Website.

(3) **Content of Advertisement.** All notices and advertisements for Offers shall set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Goods or Services to be acquired;

(c) The interval between the first date of notice or advertisement of the Solicitation Document given in accordance with subsection 2 above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for a Request for Proposals, unless the CPCA Manager determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice or advertisement of the Solicitation Document given in accordance with subsection 2 above and Closing be less then seven (7) Days. The CPCA Manager shall document the specific reasons for the shorter interval in the Procurement File;

(d) The date that Persons shall file applications for prequalification if prequalification is a requirement and the class of Goods or Services is one for which Persons shall be prequalified;

(e) The office where Contract terms, conditions and Specifications may be reviewed;

(f) The name, title and address of the individual authorized by the County to receive Offers;

(g) The scheduled Closing; and

(h) Any other appropriate information.

(4) **Posting Advertisement for Offers.** The CPCA Manager shall post notice of every Solicitation Document at the CPCA office and shall provide a copy of the Solicitation Document upon request.

(5) **Fees.** The County may charge a fee or require a deposit for the Solicitation Document.

(6) **Notice of Addenda.** Potential Offerors shall be provided notice of any Addenda to a Solicitation Document in accordance with Rule 47-0430.

Stat. Auth.: ORS 279A.065, ORS 279B.055 & ORS 279B.060
Stats. Implemented: ORS 279B.055 & ORS 279B.060

47-0310 Bids or Proposals are Offers

(1) **Offer and Acceptance.** The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract.

(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for acceptance for not less than 30 Days following Closing unless otherwise specified in the Solicitation Document. The County may elect to accept the Offer at any time during the specified period, and the Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer", the County may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are obligated to negotiate in good faith and only on those terms or conditions that the rules or the Solicitation Document have reserved for negotiation.

(2) **Contingent Offers.** Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to Rule 47-0262, a Proposer shall not make its Offer contingent upon acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(3) **Offeror's Acknowledgment.** By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposers to propose alternative terms or conditions under Rule 47-0262, the Offeror's Offer includes any nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the County in Writing and the Offeror's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065, ORS 279B.055 & ORS 279B.060

47-0320 Facsimile Bids and Proposals Department Authorization

(1) The CPCA Manager may authorize Offerors to submit Facsimile Offers. If Bid or Proposal security is or will be required, Facsimile Offers shall not be authorized unless a method has been established for receipt of such security. Prior to authorizing the submission of Facsimile Offers, the CPCA Manager shall determine that equipment and personnel are available which are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the CPCA Manager shall establish administrative procedures and controls:

(a) To receive, identify, record and safeguard Facsimile Offers;

(b) To ensure timely delivery of Offers to the location of Opening; and

(c) To preserve the Offers as sealed.

(2) **Provisions to be Included in Solicitation Document.** In addition to all other requirements, if Facsimile Offers for Bids or Proposals are authorized, the following provisions shall be included in the Solicitation Document (other than in a request for Small or Intermediate Procurements):

(a) A provision substantially in the form of the following: "A 'Facsimile Offer', as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the County via a facsimile machine.";

(b) A provision substantially in the form of the following: "Offerors may submit Facsimile Offers in response to this Solicitation Document. The entire response shall arrive at the place and by the time specified in this Solicitation Document.";

(c) A provision that requires Offerors to Sign their Facsimile Offers;

(d) A provision substantially in the form of the following: "The County reserves the right to Award the Contract solely on the basis of the Facsimile Offer. However, upon the County's request the apparent successful Offeror shall promptly submit its complete original Signed Offer.";

(e) The data and compatibility characteristics of the County's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and

(f) A provision that the County is not responsible for any failure attributable to the transmission or receipt of the Facsimile Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365

DIVISION 47 BID AND PROPOSAL PREPARATION

47-0400 Offer Preparation

(1) **Instructions.** An Offeror shall submit and Sign its Offer in accordance with the instructions set forth in the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to Closing in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

(2) **Forms.** An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

(3) **Documents.** An Offeror shall provide the County with all documents and Descriptive Literature required by the Solicitation Document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

47-0410 Offer Submission

(1) **Product Samples and Descriptive Literature.** The County may require Product Samples or Descriptive Literature if the County determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The County will dispose of Product Samples, or make them available for the Offeror to retrieve in accordance with the Solicitation Document.

(2) **Identification of Offers.**

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by CPCA, whichever is applicable.

(b) The County is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(3) **Receipt of Offers.** The Offeror is responsible for ensuring CPCA receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

47-0420 Pre-Offer Conferences

(1) **Purpose.** Pre-Offer conferences may be held with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information, or to conduct site inspections.

(2) **Required Attendance.** The County may require attendance at the pre-Offer conference as a condition for making an Offer.

(3) **Scheduled Time.** If pre-Offer conference is held, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) **Statements Not Binding.** Statements made by a County representative at the pre-Offer conference do not change the Solicitation Document unless such statements are confirmed in a Written Addendum to the Solicitation Document.

(5) **Announcement.** Notice of any pre-Offer conference shall be given in the Solicitation Document and advertisement if applicable.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

47-0430 Addenda to Solicitation Document

(1) **Issuance; Receipt.** A Solicitation Document may only be changed by Written Addenda. If required by the Solicitation Document or an Addendum the Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer.

(2) **Notice and Distribution.** The CPCA Manager shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document shall specify how the County will provide notice of Addenda and how the County will make the Addenda available before Closing, and at each subsequent step or tier of evaluation if the County will engage in a multi-step competitive sealed Bid process in accordance with Rule 47-0257, or a multi-tiered or multi-step competitive sealed Proposal process in accordance with Rule 47-0261 to 47-0263. The following is an example of how Solicitation Document may specify notice of Addenda will be given: "The County will not mail notice of Addenda, but will publish notice of any Addenda on the CPCA Website. Addenda may be downloaded off the site. Offerors should frequently check the CPCA Website until Closing, including at least once weekly until the week of Closing and at least once daily the week of the Closing."

(3) **Timelines; Extensions.**

(a) The CPCA Manager shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The CPCA Manager may extend the Closing if the CPCA Manager determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent justified by a countervailing public interest, the CPCA Manager shall not issue Addenda less than five (5) Days before the Closing unless the Addendum also extends the Closing.

(b) Notwithstanding subsection 3(a) of this Rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multistep sealed Bid or a multi-tiered or multistep sealed Proposal shall be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the CPCA Manager determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The CPCA Manager shall document the factors considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, and whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

(4) Request for Change or Protest. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in Rule 47-0730, by the close of the next Business Day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under Rule 47-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with Rule 47-0730, then the CPCA Manager may consider an Offeror's request for change or protest to the Addendum only, and the CPCA Manager shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this subsection (4) of this Rule, a Department is not required to provide a protest period for Addenda issued after initial Closing during a multi-tier or multistep Procurement process.

Stat. Auth.: ORS 279A.065 & ORS 279B.060
Stats. Implemented: ORS 279B.060

47-0440 Pre-Closing Modification or Withdrawal of Offers

(1) **Modifications.** An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the County in accordance with Rule 47-0400 and Rule 47-0410, unless otherwise specified in the Solicitation Document. Any modification shall include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Document Number (or other identification as specified in the Solicitation Document).

(2) **Withdrawals.**

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the CPCA Manager prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the CPCA Manager

(b) The CPCA Manager may release an unopened Offer withdrawn under subsection 2(a) of this Rule to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

(3) **Documentation.** The CPCA Manager shall include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement File.

Stat. Auth.: ORS 279A.065 & ORS 279B.055
Stats. Implemented: ORS 279B.055

47-0450 Receipt, Opening, and Recording of Offers; Confidentiality of Offers.

(1) **Receipt.** The CPCA Manager shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The CPCA Manager shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the CPCA Manager for any reason opens an Offer or a modification prior to the Opening, the CPCA Manager shall return the Offer or modification to its secure and confidential state until Opening. The CPCA Manager shall document the resealing for the Procurement File (e.g. "County opened the Offer due to improper identification of the Offer.").

(2) **Opening and Recording.** The CPCA Manager shall publicly open Offers including any modifications made to the Offer pursuant to 47-0440(1). In the case of Invitations to Bid, to the extent practicable, the CPCA Manager shall read aloud the name of each Bidder, and such other information as the CPCA Manager considers appropriate. However, the CPCA Manager may withhold from disclosure information in accordance with Rule 47-0255(4)(b) and Rule 47-0260(6). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the CPCA Manager will not read Offers aloud.

Stat. Auth.: ORS 279A.065 & ORS 279B.055
Stats. Implemented: ORS 279B.055

47-0460 Late Offers, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The CPCA Manager shall not consider late Offers, withdrawals or modifications.

Stat. Auth.: ORS 279A.065 & ORS 279B.055
Stats. Implemented: ORS 279B.055

47-0470 Mistakes

(1) **Generally.** To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, the CPCA Manager shall carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) **Treatment of Mistakes.** The CPCA Manager shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the CPCA Manager discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the CPCA Manager may take the following action:

(a) The CPCA Manager may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and

intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) The CPCA Manager may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the CPCA Manager's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit prices.

(c) Changes in bids prejudicial to the interests of the public or fair competition are not permitted.

(d) The CPCA Manager may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the CPCA Manager does not grant the Offeror permission to withdraw the Offer;

(G) That the CPCA Manager's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the County or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the CPCA Manager.

(e) The criteria in subsection (2)(d) of this Rule shall determine whether the CPCA Manager will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether the CPCA Manager will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the County based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded, whether by Award to the next lowest Responsive and Responsible Bidder or the most Advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) **Rejection for Mistakes.** The CPCA Manager shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) **Identification of Mistakes after Award.** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 47 only to the extent permitted by applicable law.

(5) **Written Determination.** All decisions to permit the correction or withdrawal of bids, or to cancel an Award or a Contract based on bid mistakes, shall be supported by a Written determination by the CPCA Manager that states the reasons for the action taken.

Stat. Auth.: ORS 279A.065 & ORS 279B.055
Stats. Implemented: ORS 279B.055

47-0480 Time for Acceptance

An Offeror's Offer is a Firm Offer, irrevocable, valid and binding on the Offeror for not less than thirty (30) Days following Closing unless otherwise specified in the Solicitation Document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

47-0490 Extension of Time for Acceptance of Offer

The CPCA Manager may request, orally or in Writing, that Offerors extend, in Writing, the time during which the County may consider their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

DIVISION 47 QUALIFICATIONS AND DUTIES

47-0500 Responsibility of Bidders and Proposers

Before Awarding a Contract the CPCA Manager shall determine that the Bidder submitting the lowest Bid or Proposer submitting the most Advantageous Proposal is Responsible. The CPCA Manager shall use the standards set forth in Rule 47-0640(1)(c)(F) to determine if a Bidder or Proposer is Responsible. In the event the CPCA Manager determines a Bidder or Proposer is not responsible, the CPCA Manager shall prepare a written determination of non-Responsibility and shall reject the Offer.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.110

47-0525 Qualified Products Lists

(1) **General.** A Department may develop and maintain a qualified products list in instances in which the testing or examination of Goods before initiating a Procurement is necessary or desirable in order to best satisfy the requirements of the County. For purposes of this section, "Goods" includes products that have associated or incidental service components, such as supplier warranty obligations or maintenance service programs.

(2) **List Development.** In the initial development of any qualified products list, a Department shall give public notice, in accordance with Rule 47-0255, of the opportunity for potential contractors, sellers or suppliers to submit Goods for testing and examination to determine their acceptability for inclusion on the list and may solicit in Writing representative groups of potential contractors, sellers or suppliers to submit Goods for the testing and examination. Any potential contractor, seller or supplier, even though not solicited, may offer its Goods for consideration.

(3) **Tests or Examinations.** A Department's inclusion of Goods on a qualified products list shall be based on the results of tests or examinations. Notwithstanding any provision of ORS 192.410 to 192.505, a Department may make the test or examination results public in a manner that protects the identity of the potential contractor, seller or supplier that offered the Goods for testing or examination, including by using only numerical designations. Notwithstanding any provision of ORS 192.410 to 192.505, a Department may keep confidential trade secrets, test data and similar information provided by a potential contractor, seller or supplier if so requested in Writing by the potential contractor, seller or supplier.

(4) **Inclusion on List is not Prequalification.** The inclusion of Goods on a qualified products list does not constitute and may not be construed as a prequalification under Rule 47-0550 of any prospective contractor, seller or supplier of Goods on the qualified products list.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.115

47-0550 Prequalification of Prospective Offerors; Pre-negotiation of Contract Terms and Conditions

(1) **General.** The County may prequalify prospective Bidders or Proposers to submit bids or Proposals for Public Contracts to provide particular types of Goods or services.

(2) **Prequalification Application.** When a Department permits or requires prequalification of Bidders or Proposers, the Department shall prepare a prequalification application setting forth the criteria and qualifications for prequalification. Upon receipt of a prequalification application, the Department shall investigate the prospective Bidder or Proposer as necessary to determine whether the prospective Bidder or Proposer is qualified. The determination shall be made in less than thirty (30) Days, if practicable, if the prospective Bidder or Proposer requests an early decision to allow the prospective Bidder or Proposer as much time as possible to prepare a bid or Proposal for a Contract that has been advertised. In making its determination, the Department shall consider only the applicable standards of responsibility listed in Rule 47-0640(1)(c)(F). The CPCA Manager shall promptly notify the prospective Bidder or Proposer whether the prospective Bidder or Proposer is qualified.

(3) **Notice.** If the Department finds that a prospective Bidder or Proposer is qualified, the notice shall state the type, nature and dollar limit of contracts that the prospective Bidder or Proposer is qualified to compete for and the period of time for which the prequalification is valid. If the Department finds that the prospective Bidder or Proposer is not qualified as to any contracts the notice shall specify the reasons given for not pre-qualifying the prospective Bidder or Proposer and shall specify which of the standards of responsibility listed in Rule 47-0640(1)(c)(F) the prospective Bidder or Proposer failed to meet. Unless the reasons are specified, the prospective Bidder or Proposer shall be deemed to have been prequalified in accordance with the application. The notice shall inform the prospective Bidder or Proposer of the right to a hearing under Rule 47-0760 and the time within which an appeal shall be filed.

(4) **Revocation or Revision for Substantial Change.** If a Department has reasonable cause to believe that there has been a substantial change in the conditions of a prequalified prospective Bidder or Proposer and that the prospective Bidder or Proposer is no longer qualified or is less qualified, the Department may revoke or may revise and reissue the prequalification after reasonable notice to the prequalified prospective Bidder or Proposer. The notice shall specify the reasons given for revocation or revision of the prequalification of the prospective Bidder or Proposer and inform the prospective Bidder or Proposer of the right to appeal and the right to a hearing under Rule 47-0760. To be entitled to a hearing under Rule 47-0760, a prospective Bidder or Proposer shall, within three (3) Days after receipt of the notice, notify the CPCA Manager that the prospective Bidder or Proposer requests a hearing under Rule 47-0760. A revocation or revision does not apply to any Contract for which an advertisement for bids or Proposals was issued before the date the notice of revocation or revision was received by the prequalified prospective Bidder or Proposer however, the CPCA Manager may determine that a prequalified Offeror is not Responsible prior to Contract Award.

(5) After consultation with a County Attorney, a Department may pre-negotiate some or all Contract terms and conditions including prospective Proposer Contract forms such as license agreements, maintenance and support agreements or similar documents for use in future Procurements. Such pre-negotiation of Contract terms and conditions (including prospective Proposer forms) may be part of the prequalification process of a Proposer under this Rule or the pre-negotiation may be a separate process and not part of a prequalification process. Unless required as part of the prequalification process, the failure of the Department and a prospective Proposer to reach agreement on pre-negotiated Contract terms and conditions does not prohibit the prospective Proposer from responding to Procurements. A Department may agree to different pre-negotiated Contract terms and conditions with different prospective Proposers. When a Department has pre-negotiated different terms and conditions with Proposers or when permitted, Proposers offer different terms and conditions, a Contracting Agency may consider the terms and conditions in the Proposal evaluation process.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.120

47-0575 Debarment of Prospective Offerors

(1) Authority. The County may debar an Offeror after providing the Person with notice and a reasonable opportunity to be heard in accordance with these Rules.

(2) Standards for Debarment. The County may debar a Person for:

(a) The prospective Bidder or Proposer has been convicted of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract.

(b) The prospective Bidder or Proposer has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the prospective Bidder's or Proposer's responsibility as a Contractor.

(c) The prospective Bidder or Proposer has been convicted under state or federal antitrust statutes.

(d) The prospective Bidder or Proposer has committed a violation of a contract provision and debarment for such a violation was listed in the contract terms and conditions as a potential penalty. A violation may include but is not limited to a failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the Contractor may not be considered to be a basis for debarment.

(e) The prospective Bidder or Proposer does not carry workers' compensation or unemployment insurance as required by statute.

(f) Violation of ORS 279A.110(1), prohibiting discrimination in subcontracting.

(3) Notice of Intent to Debar. CPCA shall notify the Person in Writing of a proposed Debarment personally or by registered or certified mail, return receipt requested. This notice shall:

(a) State that the County intends to debar the Person;

(b) Set forth the reasons for the Debarment;

(c) Include a statement that the Person shall have a right to appeal the notice of intent to debar and have a hearing in accordance with Rule 47-0760 and a statement of the time within which an appeal shall be filed.

(d) Include a reference to the particular sections of the statutes and rules involved;

(e) State that the Person may be represented by legal counsel at the hearing.

(4) Appeal and Hearing. Appeal of the notice and hearing on the appeal shall be in accordance with the provisions of Rule 47-0760.

(5) **Imputed Knowledge.** The County may attribute improper conduct of a Person or its affiliate or affiliates having a contract with a prospective Offeror to the prospective Offeror for purposes of Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

(6) **Limited Participation.** The CPCA Manager may allow a Debarred Person to participate in solicitations and Contracts on a limited basis during the Debarment period upon Written determination that participation is Advantageous to the County. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.130

DIVISION 47 OFFER EVALUATION AND AWARD

47-0600 Offer Evaluation and Award

(1) Evaluation. The County shall evaluate Offers only as set forth in the Solicitation Document, pursuant to Rule 47-0255(5) and Rule 47-0260(7)(a), and in accordance with applicable law. The County shall not evaluate Offers using any other requirement or criterion.

(a) **Preferences.**

(A) **Nonresident Bidders.** In determining the lowest Responsive Bid, the County shall apply the reciprocal preference set forth in Rule 46-0310 for Nonresident Bidders.

(B) **Public Printing.** The County shall for the purpose of evaluating Bids apply the public printing preference set forth in ORS 282.210.

(C) **Award When Bids are Identical.** If the County determines that one (1) or more Bids are identical under Rule 46-0300, the County shall Award a Contract in accordance with the procedures set forth in Rule 46-0300.

(b) **Evaluation of Proposals.**

(A) **Award When Proposals are Identical.** If the County determines that one (1) or more Proposals are identical under Rule 46-0300, the County shall Award a Contract in accordance with the procedures set forth in Rule 46-0300.

(B) **Public Printing.** The County shall for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(c) **Recycled Materials.** When procuring Goods, the County shall give preference for recycled materials as set forth in Rule 46-0320.

(2) Clarification of Bids or Proposals. After Opening, the County may conduct Discussions with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Bids or Proposals. All Bids or Proposals, in the Department's sole discretion, needing clarification shall be accorded such an opportunity. CPCA shall document clarification of any Bidder's Bid in the Procurement File.

(3) Negotiations.

(a) **Bids.** The County shall not negotiate with any Bidder. After Award of the Contract, the Department and Contractor may only modify the Contract in accordance with Rule 47-0800.

(b) **Requests for Proposals.** The County may conduct Discussions or negotiate with Proposers only in accordance with Rules 47-0260 and 47-0262. After Award of the Contract, the Department and Contractor may only modify the Contract in accordance with Rule 47-0800.

(4) Award.

(a) **General.** If Awarded, CPCA shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. CPCA may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) **Multiple Items.** An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a "market basket" of items representative of the Department's expected purchases, or grand total of all items.

(c) **Multiple Awards - Bids.**

(A) Notwithstanding subsection 4(a) of this Rule, CPCA may Award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. Multiple Awards shall not be made if a single Award will meet the Department's needs, including but not limited to adequate availability, delivery, service, or product compatibility and skills. A multiple Award may be made if Award to two or more Bidders of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be Awarded for any Invitation to Bid shall not preclude CPCA from Awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the County shall specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.

(d) **Multiple Awards – Proposals.**

(A) Notwithstanding subsection 4(a) of this Rule, CPCA may Award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. Multiple Awards shall not be made if a single Award will meet the Department's needs, including but not limited to adequate availability, delivery, service or product compatibility. A multiple Award may be made if Award to two or more Proposers of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to obtaining the most Advantageous Contract. A notice to prospective Proposers that multiple Contracts may be Awarded for any Request for Proposals shall not preclude CPCA from Awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the County shall specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services which may include consideration and evaluation of the Contract terms and conditions agreed to by the Proposers.

(e) **Partial Awards.** If after evaluation of Offers, the Department determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) CPCA may Award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) CPCA may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(f) **All or none Offers.** CPCA may Award all or none Offers if the evaluation shows an all or none Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

Stat. Auth.: ORS 279A.065 & ORS 279B.060
Stats. Implemented: ORS 279B.055 & ORS 279B.060

47-0610 Notice of Intent to Award

(1) Notice of Intent to Award. CPCA shall provide Written notice of intent to Award to all Bidders and Proposers at least seven (7) Days before the Award of a Contract, unless the CPCA Manager determines that circumstances justify prompt execution of the Contract, in which case the CPCA Manager may provide a shorter notice period. The CPCA Manager shall document the specific reasons for the shorter notice period in the Procurement File. This section does not apply to a Contract awarded as a small Procurement, an Intermediate Procurement, a Sole-Source Procurement, an Emergency Procurement or a Special Procurement authorized by rule under Rule 47-0288.

(2) Finality. The Award shall not be final until the later of the following:

(a) The expiration of the protest period provided pursuant to Rule 47-0740(3); or

(b) CPCA provides written responses to all timely-filed protests denying the protests and affirming the Award.

Stat. Auth.: ORS 279A.065 & ORS 279B.135
Stats. Implemented: ORS 279B.135

47-0620 Documentation of Award

(1) Basis of Award. After Award, the CPCA Manager shall make a record showing the basis for determining the successful Offeror part of the Procurement File.

(2) Contents of Award Record. The record shall include:

(a) For Bids:

(A) Bids;

(B) Completed Bid tabulation sheet; and

(C) Written justification for any rejection of lower Bids.

(b) For Proposals:

(A) Proposals;

(B) The completed evaluation of the Proposals;

(C) Written justification for any rejection of higher scoring Proposals; and

(D) If the County engaged in any of the methods of Contractor selection described in Rule 47-0260 and Rules 47-0261 to 47-0263, Written documentation of the content of any Discussions, Negotiations, best and final Offers, or any other procedures the County used to select a Proposer to which the CPCA Manager Awarded a Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: 279A.065

47-0630 Availability of Award Decisions

(1) **Contract Documents.** To the extent required by the Solicitation Document, the Department shall deliver to the successful Offeror a Contract, Signed purchase order, Price Agreement, or other Contract documents as applicable.

(2) **Availability of Award Decisions.** A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a minimal charge established by the CPCA Manager, in person or by submitting to the CPCA Manager a Written request accompanied by payment. The requesting Person shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, the County may make available tabulations of Bids and Proposals through the County's website.

(3) **Availability of Procurement Files.** After notice of intent to Award, the CPCA Manager shall make Procurement Files available in accordance with applicable law.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.055 & ORS 279B.060

47-0640 Rejection of an Offer

(1) **Rejection of an Offer.**

(a) The CPCA Manager may reject any Offer when the CPCA Manager determines that rejection is in the best interest of the County. The reasons for the rejection shall be made part of the Procurement File. The County shall not be liable to any Bidder or Proposer for any loss or expense caused by or resulting from the rejection of a bid or Proposal.

(b) The CPCA Manager shall reject an Offer upon finding that the Offer:

(A) Is contingent upon the acceptance of terms and conditions (including Specifications) that differ materially from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law, unless the Offeror agrees after Opening to withdraw any conditions in the bid prohibiting disclosure;

(D) Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public Procurement procedures.

(c) The CPCA Manager shall reject an Offer upon finding that the Offeror:

(A) Has not been prequalified under Rule 47-0550 and the required mandatory prequalification if required by the Solicitation Document;

(B) Has been Debarred under Rule 47-0575;

(C) Has not met the requirements of Rule 46-0210, if required by the Solicitation Document;

(D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(E) Has failed to provide the certification of non-discrimination required 46-0210(3); or

(F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the CPCA Manager shall determine that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner. The CPCA Manager should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the CPCA Manager should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The CPCA Manager may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The CPCA Manager shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement File;

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if the CPCA Manager determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. The CPCA Manager may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under Rule 47-0575 may be used to determine an Offeror's integrity. An Offeror may be found to be nonresponsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The CPCA Manager shall make the basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement File;

(iv) Is legally qualified to contract with the County; and

(v) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the CPCA Manager concerning Responsibility, the

CPCA Manager shall base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

(2) **Form of Business Entity.** For purposes of this Rule, the CPCA Manager may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this Rule or to apply the Debarment provisions of Rule 47-0575.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100 & 279B.110

47-0650 Rejection of All Offers

(1) **Rejection.** The CPCA Manager may reject all Offers when the CPCA Manager determines that rejection is in the best interest of the County. The reasons for the rejection shall be made part of the Procurement File. The County shall not be liable to any Bidder or Proposer for any loss or expense caused by or resulting from the rejection of all bids, or Proposals.

(2) **Criteria.** The CPCA Manager may reject all Offers based upon the following criteria:

(a) The content of or an error in the Solicitation Document, or the Procurement process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The CPCA Manager cancels the Procurement or Solicitation in accordance with Rule 47-0660; or

(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100

47-0660 Cancellation, Rejection, Delay or Suspension of a Procurement or Solicitation

(1) **Cancellation, Rejection, Delay or Suspension of a Procurement or Solicitation.** Any Solicitation or Procurement described in a Solicitation may be canceled, or any or all bids or Proposals may be rejected in whole or in part, when the cancellation or rejection is in the best interest of the County. The reasons for the cancellation or rejection shall be made part of the Procurement File. The County shall not be liable to any Bidder or Proposer for any loss or expense caused by or resulting from the cancellation or rejection of a solicitation, bid, Proposal or Award. Any Solicitation or Procurement described in a Solicitation may be delayed or suspended when the delay or suspension is in the best interest of the County. The County shall make the reasons for the delay or suspension part of the Procurement File. The County shall not be liable to any Bidder or Proposer for any loss or expense caused by or resulting from the delay or suspension of a solicitation, bid, Proposal or Award.

(2) **Notice of Cancellation Before Opening.** If the CPCA Manager cancels a Procurement or Solicitation prior to Opening, the CPCA Manager shall provide Written notice of cancellation Such notice of cancellation shall:

(a) Identify the Solicitation Document;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any re-solicitation.

(3) **Notice of Cancellation After Opening.** If the CPCA Manager cancels a Procurement or Solicitation after Opening, the CPCA Manager shall provide Written notice of cancellation to all Offerors who submitted Offers.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100

47-0670 Disposition of Offers if Procurement or Solicitation Canceled

(1) **Prior to Opening.** If the CPCA Manager cancels a Procurement or Solicitation prior to Opening, the CPCA Manager shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the CPCA Manager shall open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, if any, the CPCA Manager shall delete the Offers from the Electronic Procurement System or information technology system.

(2) **After Opening.** If the CPCA Manager cancels a Procurement or Solicitation after Opening, the CPCA Manager:

(a) May return Proposals in accordance with Rule 47-0260(6)(b);

(b) Shall keep Bids in the Procurement File.

(3) **Rejection of All Offers.** If the CPCA Manager rejects all Offers, the CPCA Manager shall keep all Proposals and Bids in the Procurement File.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100

DIVISION 47 LEGAL REMEDIES

47-0700 Protests and Judicial Review of Special Procurements

(1) **Purpose.** An Affected Person may protest the approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval of a Special Procurement, an Affected Person shall file a Written protest with the CPCA Manager and exhaust all administrative remedies.

(2) **Delivery.** Protest of Approval of a Special Procurement. Notwithstanding the requirements for filing a writ of review under ORS chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person shall deliver a Written protest to the CPCA Manager within seven (7) Days after the first date of public notice of the approval of a Special Procurement by the CPCA Manager or the Board, unless a different protest period is provided in the public notice of the approval of a Special Procurement.

(3) **Content of Protest.** The Written protest shall include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) **Response to Protest.** Protest of Approval of a Special Procurement: The CPCA Manager or the Board shall not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this Rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The CPCA Manager or the Board shall issue a Written disposition of the protest in a timely manner. If the CPCA Manager or the Board upholds the protest, in whole or in part, they may in their sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement. A Department may, in lieu of having the protest presented to the CPCA Manager or the Board, notify the CPCA Manager that it will not pursue the procurement as a Special Procurement. Written notice of the Department's decision shall be given to the Affected Person.

(5) **Judicial Review.** An Affected Person may seek judicial review of the CPCA Manager's or the Board's decision under subsection (4) above denying a protest of the approval of a Special Procurement. Judicial review shall be in accordance with ORS 279B.400.

Stat. Auth.: ORS 279A.065 & ORS 279B.400
Stats. Implemented: ORS 279B.400

47-0710 Protests and Judicial Review of Sole-Source Procurements

(1) **Purpose.** For Sole-Source Procurements requiring public notice, an Affected Person may protest the determination of the CPCA Manager or the Board under Rule 47-0275 that the Goods or Services or class of Goods or Services are available from only one (1) source. Before seeking judicial review, an Affected Person shall file a Written protest with the CPCA Manager and exhaust all administrative remedies.

(2) **Delivery.** Unless otherwise specified in the public notice of the Sole-Source Procurement, an Affected Person shall deliver a Written protest to the CPCA Manager within seven (7) Days after the first date of public notice of the Sole-Source Procurement, unless a different protest period is provided in the public notice of a Sole-Source Procurement.

(3) **Content of Protest.** The Written protest shall include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) **Response to Protest.** No protest shall be considered under this section if it is submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the public notice of the Sole-Source Procurement. The CPCA Manager or the Board shall issue a Written disposition of the protest in a timely manner. If the protest is upheld in whole or in part, the County shall not enter into a sole-source Contract.

(5) **Judicial Review.** Judicial review of the decision in subsection (4) above shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.075

47-0720 Protests and Judicial Review of Multi-Tiered and Multistep Solicitations

(1) **Purpose.** An Affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a Solicitation in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then, before seeking judicial review, an Affected Offeror shall file a Written protest with the CPCA Manager and exhaust all administrative remedies.

(2) **Basis for Protest.** An Affected Offeror may protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and but for the mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier or step of competition. (For example, the protesting Offeror shall claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are ineligible for inclusion in the Competitive Range because their Proposals were not Responsive, or the County committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.)

(3) **Delivery.** Unless otherwise specified in the Solicitation Document, an Affected Offeror shall deliver a Written protest to the CPCA Manager within seven (7) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers or steps.

(4) **Content of Protest.** The Affected Offeror's protest shall be in Writing and shall specify the grounds upon which the protest is based.

(5) **Response to Protest.** The CPCA Manager shall not consider an Affected Offeror's multi-tiered or multistep Solicitation protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the Solicitation Document. The CPCA Manager shall issue a Written disposition of the protest in a timely manner. If the CPCA Manager upholds the protest, in whole or in part, the CPCA Manager may in his or her sole discretion either issue an Addendum under Rule 47-0430 reflecting the disposition of the protest or cancel the Procurement or Solicitation under Rule 47-0660.

(6) **Judicial Review.** Judicial review of the decision relating to a multi-tiered or multistep Solicitation protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060

47-0730 Protests and Judicial Review of Solicitations

(1) **Purpose.**

(a) A prospective Offeror may protest the Procurement process or the Solicitation Document for a Contract solicited under Rules 47-0255, 47-0260 and 47-0285. Before seeking judicial review, a prospective Offeror shall file a Written protest with the CPCA Manager and exhaust all administrative remedies.

(b) Contract-Specific Special Procurements. Notwithstanding subsection 1(a) of this Rule, a Person may not protest, challenge, or review a Contract-Specific Special Procurement except upon the occurrence of the conditions set forth in ORS 279B.405(2)(b).

(2) **Delivery.** Unless otherwise specified in the Solicitation Document, a prospective Offeror shall deliver a Written protest to the CPCA Manager not less than ten (10) Days prior to Closing.

(3) **Content of Protest.** In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest shall include a statement of the changes to the Procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

(4) **Response to Protest.** The CPCA Manager shall not consider a Prospective Offeror's Solicitation protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the Solicitation Document. The CPCA Manager shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The CPCA Manager shall issue a Written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If the CPCA Manager upholds the protest, in whole or in part, the CPCA Manager may in his or her sole discretion either issue an Addendum reflecting its disposition under Rule 47-0430 or cancel the Procurement or Solicitation under Rule 47-0660.

(5) **Extension of Closing.** If the CPCA Manager receives a protest from a prospective Offeror in accordance with this Rule, the CPCA Manager may extend Closing if the CPCA Manager determines an extension is necessary to consider and respond to the protest.

(6) **Clarification.** Prior to the deadline for submitting a protest, a prospective Offeror may request clarification of any provision of the Solicitation Document. Any such request shall be in Writing and any response shall also be in Writing and shall be included in an Addendum to the Solicitation Document.

(7) Judicial Review. Judicial review of the decision relating to a Solicitation protest shall be in accordance with ORS 279B.405.

Stat. Auth.: ORS 279A.065 & ORS 279B.405
Stats. Implemented: ORS 279B.405

47-0740 Protests and Judicial Review of Contract Award

(1) **Purpose.** An Offeror may protest the Award of a Contract, or the intent to Award a Contract, whichever occurs first, if :

(a) The Bidder or Proposer is adversely affected because the Bidder or Proposer would be eligible to be awarded the Public Contract in the event that the protest were successful; and

(b) The reason for the protest is that:

(A) All lower bids or higher ranked Proposals are nonresponsive;

(B) The County has failed to conduct the evaluation of Proposals in accordance with the criteria or processes described in the Solicitation materials;

(C) The County has abused its discretion in rejecting the protestor's bid or Proposal as nonresponsive; or

(D) The County's evaluation of bids or Proposals or the County's subsequent determination of Award is otherwise in violation of these Rules.

(2) **Exhaustion of Remedies.** An Offeror shall file a Written protest with the CPCA Manager and exhaust all administrative remedies before seeking judicial review of the Contract Award decision.

(3) **Delivery.** Unless otherwise specified in the Solicitation Document, an Offeror shall deliver a written protest to the CPCA Manager within seven (7) Days after the Award of the Contract or issuance of the notice of intent to Award the Contract, whichever occurs first.

(4) **Content of Protest.** An Offeror's Written protest shall specify the grounds for the protest to be considered by the CPCA Manager.

(5) **Response to Protest.** The CPCA Manager shall not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the Solicitation Document. The CPCA Manager shall issue a Written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the CPCA Manager upholds the protest, in whole or in part, the CPCA Manager may in his or her sole discretion either Award the Contract to the successful protestor or cancel the Procurement or solicitation.

(6) **Judicial Review.** Judicial review of the decision relating to a Contract Award protest shall be in accordance with ORS 279B.415.

Stat. Auth.: ORS 279A.065 & ORS 279B.410
Stats. Implemented: ORS 279B.410 & ORS 279B.415

47-0745 Protests and Judicial Review of Qualified Products List Decisions

(1) **Purpose.** A prospective Offeror may protest the decision to exclude the prospective Offeror's Goods from the County's qualified products list under Rule 47-0525. A prospective Offeror shall file a written protest and exhaust all administrative remedies before seeking judicial review of the Department's qualified products list decision.

(2) **Delivery.** Unless otherwise stated in the Department's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list, a prospective Offeror shall deliver a written protest to the CPCA Manager within seven (7) Days after issuance of the decision to exclude the prospective Offeror's Goods from the qualified products list.

(3) **Content of Protest.** The prospective Offeror's protest shall be in Writing and shall specify the grounds upon which the protest is based.

(4) **Response to Protest.** The CPCA Manager shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list. The CPCA Manager shall issue a written disposition of the protest in a timely manner. If the CPCA Manager upholds the protest, it shall include the successful protestor's Goods on the qualified products list.

(5) **Judicial Review.** Judicial review of the decision relating to a qualified products list protest shall be in accordance with ORS 279B.425.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.115

47-0750 Judicial Review of Other Violations

Any violation of these Rules or ORS chapter 279A or 279B by the County for which no judicial remedy is otherwise provided in the Public Contracting Code is subject to judicial review as set forth in ORS 279B.420.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.420

47-0760 Review of Prequalification and Debarment Decisions

Review of the County's prequalification and Debarment decisions shall be as set forth in ORS 279B.425.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.425

DIVISION 47 CONTRACT AMENDMENTS

47-0800 Amendments to Contracts and Price Agreements

(1) An amendment for additional Goods or services which is reasonably related to the scope of Work under the original Contract, including change orders, extra Work, field orders, or other change in the original Specifications that increases the original Contract Price, may be made with the Contractor without Competitive Solicitation subject to the following conditions:

(a) The original Contract was let by Competitive Solicitation or alternative Procurement process including Special Procurements or Sole Source Procurements that were publicly noticed and unit prices or additive alternates were provided that established the cost basis for the additional Goods or services and a binding obligation exists on the parties covering the terms and conditions of the additional Work; or

(b) The original Contract was let pursuant to a declaration of Emergency, in accordance with Rule 47-0280; or

(c) The additional Goods or services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, that affect performance of the original Contract; or

(d) When subsections (a), (b) or (c) above do not apply a Department shall have authority to authorize increases resulting from amendments to a Contract provided that the total of all such increases shall not exceed 20 percent of the original Contract Price. For contracts of $150,000 or less increases in excess of this 20 percent limit shall be submitted to the CPCA Manager for approval prior to authorization for the additional Goods or services. For contracts in excess of $150,000, increases in excess of the 20 percent limit shall be submitted to the CPCA Manager to obtain approval by the Board prior to authorization for the additional Goods or services. Escalation clauses showing cost of living increases over the life of the contract are excluded from the 20% limitation if the escalation was part of the original solicitation and contract.

(e) Every Contract for Goods, Services and Public Works that are not Public Improvements, including emergency contracts, shall comply with the requirements of this Rule.

(2) **Renegotiated Contract.** A Department may renegotiate the terms and conditions, including the Contract Price, of a Contract without additional competition and amend a Contract if it is Advantageous to the Department subject to the following conditions:

(a) The amended Contract is within the Scope of the Solicitation Document, or if no Solicitation Document, the Contract, or in the instance of a Special Procurement the approval of Special Procurement;

(b) A Department shall determine that, with all things considered, the renegotiated Contract is at least as favorable to the Department as the original Contract; and

(c) The renegotiated Contract will not have a total term greater than allowed in the original Solicitation Document, Contract or approval of a Special Procurement after combining the initial and extended terms. For example, a one-year Contract, renewable each year for up to four additional years, may be renegotiated as a two to five-year Contract, but not beyond a total of five years unless the original procurement allowed for a longer contract period. Also, if multiple Contracts with a single Contractor are restated as a

single Contract, the term of the single Contract may not have a total term greater than the longest term of any of the prior Contracts.

(d) If a Contractor offers a lower price in exchange for a change in term or condition that was expressly rejected in the original solicitation, the amended Contract may be structured with this changed term as an optional, but not as a mandatory Contract term.

(e) If the Contract is the result of a Cooperative Procurement, the amended Contract may not materially change the terms, conditions, and prices of the original Contract.

(3) **Small or Intermediate Contract.** The County may amend a Contract Awarded as small or Intermediate Procurement pursuant to subsections (1) or (2) of this Rule, provided also the total Contract price does not exceed the limits set forth in Rule 47-0265(4) for small Procurements and Rule 47-0270(5) for Intermediate Procurements.

(4) **Emergency Contract.** A Department may amend a Contract Awarded as an Emergency Procurement if the Emergency justification for entering into the Contract still exists, and the amendment is necessary to address the continuing Emergency.

(5) **Price Agreements.** A Department may amend or terminate a Price Agreement as follows:

(a) As permitted by the Price Agreement;

(b) As permitted by this Rule;

(c) The County fails to receive funding, appropriations, limitations, allotments or other expenditure authority, including the continuation of program operating authority sufficient, as determined in the discretion of the County, to sustain purchases at the levels contemplated at the time of contracting;

(d) Any change in law or program termination that makes purchases under the price agreement no longer authorized or appropriate for the County's use; or

(e) As otherwise permitted by applicable law.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

DIVISION 48 CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, LAND SURVEYING AND RELATED SERVICES CONTRACTS

48-0100 Application

The Rules in this Division 48 implement ORS Chapter 279C and apply to the screening and selection of Architects, Engineers, Land Surveyors, and Providers of Related Services under Contracts, and set forth the procedures through which Departments select Consultants to perform Architectural, Engineering, Land Surveying and Related Services.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070
Stats. Implemented: ORS 279A.065

48-0110 Definitions

The definitions for this Division 48 are found in Division 46, except the following definitions apply only to this Division 48:

(1) **Architect.** A person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms "architect," "licensed architect" and "registered architect.

(2) **Architectural, Engineering and Land Surveying Services.** Professional services that are required to be performed by an architect, engineer or land surveyor.

(3) **Agreement-To-Agree.** A Written document of understanding negotiated between a Department and the Consultant for the provision of services on a single Project, or on more than one (1) project, which contains contract clauses that will apply to future Contracts during its term to be established through Work orders and which will incorporate the required and applicable clauses of the Agreement-To-Agree. Agreement-To-Agree documents are also referred to as Price Agreements.

(4) **Consultant.** An Architect, Engineer, Land Surveyor, or provider of Related Services. A Consultant includes a business entity that employs Architects, Engineers, Land Surveyors or providers of Related Services, or any combination of the foregoing.

(5) **Design-Build.** An alternative contracting method for the construction of Public Improvements where construction and design services are combined in a single Contract.

(6) **Direct Appointment or Direct Appointment Procedure.** The Consultant selection method provided for under Rule 48-0200.

(7) **Engineer.** A person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002 (2)

(8) **Estimated Fee.** A Department's reasonably projected fee to be paid for a Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract Solicitation method and is distinct from the total amount payable under the Contract. The Estimated Fee shall not be used as a basis to resolve other public contracting issues.

(9) **Formal Selection Procedure.** The Consultant selection method provided for under Rule 48-0220.

(10) **Informal Selection Procedure.** The Consultant selection method provided for under Rule 48-0210.

(11) **Land surveyor.** A person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002 (4).

(12) **Mixed Contract.** A Contract that requires the Consultant to perform certain Architectural, Engineering, Land Surveying or Related Services and also to provide the Department with other kinds of Supplies and Services; the classification of a Mixed Contract as a Contract for Architectural, Engineering, Land Surveying or Related Services is determined by the Mixed Contract's predominate purpose. For a Mixed Contract to be considered a Contract for Architectural, Engineering, Land Surveying or Related Services, the majority of the payments made or received under the Mixed Contract shall be for Architectural, Engineering, Land Surveying or Related Services.

(13) **Project.** All components of a Department's planned undertaking that gives rise to the need for a Consultant's Architectural, Engineering, Land Surveying or Related Services under a Contract.

(14) **Proposer.** A Consultant who submits a Proposal to a Department in response to a Request for Proposals.

(15) **Related services.** Personal services, other than architectural, engineering and land surveying services, that are related to the planning, design, engineering or oversight of public improvement projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, environmental impact studies, hazardous substances or hazardous waste or toxic substances testing services, wetland delineation studies, wetland mitigation studies, Native American studies, historical research services, endangered species studies, rare plant studies, biological services, archaeological services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representative services or land-use planning services.

(16) **Request for Qualifications or RFQ.** A Written document issued by a Department to which Consultants respond with a description of their experience with and qualifications for the Architectural, Engineering, Land Surveying or Related Services described in the RFQ and from which the Department creates a list of Consultants who are qualified to perform those services, but which is not intended to result in a Contract between a Consultant and a Department.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070
Stats. Implemented: ORS 279A.065

48-0120 List of Interested Consultants; Performance Record

(1) Consultants who are interested in providing Architectural, Engineering, Land Surveying or Related Services may annually submit a statement describing their qualifications and related performance information to Departments' office addresses. Departments may use this information to create a list of prospective Consultants and which will be updated at least once every five years.

(2) Departments may compile and maintain a record of each Consultant's performance under contracts with the particular Department, including information obtained from Consultants during an exit interview. Upon request and in accordance with the Oregon Public Records Law (ORS 192.410 to ORS 192.505) Departments may make available copies of the records.

(3) Departments shall keep a record of all Contracts and shall make these records available to the public consistent with the requirements of the Oregon Public Records Law (ORS 192.410 to 192.505). Departments shall include the following information in the record:

(a) Consultant's principal office address and all office addresses in the State of Oregon;

(b) Consultant's direct expenses on each Contract whether or not those direct expenses are reimbursed. "Direct expenses" include all amounts that are directly attributable to Consultant's services performed under each Contract, including personnel travel expenses, and that would not have been incurred but for the services being performed. The record shall include all personnel travel expenses as a separate and identifiable expense on the Contract; and

(c) The total number of Contracts awarded to each Consultant over the immediately preceding 10-year period from the date of the record.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070
Stats. Implemented: ORS 279C.110

48-0130 Disclosure of Proposals; Conflicts of Interest

(1) Notwithstanding the public records law, ORS 192.410 to 192.505, if a Department solicits a contract for architectural, engineering or land surveying services or related services using any of the methods provided for in Rules 48-0200, 48-0210 and 48-0220, Proposals may be opened so as to avoid disclosure of contents to competing proposers during, when applicable, the process of negotiation. Proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued or, in the case of selection under Rule 48-0200, until after the Department has made the decision to begin contract negotiations with the selected consultant.

(2) Notwithstanding any requirement to make proposals open to public inspection after the issuance of notice of intent to award a contract (or, in the case of selection under Rule 48-0200, until after the Department has made the decision to begin contract negotiations with the selected consultant) CPCA may withhold from disclosure to the public trade secrets, as defined in ORS 192.501, and information submitted to a public body in confidence, as described in ORS 192.502, that are contained in a proposal. If a request for proposals is canceled after proposals are received, CPCA may return a proposal to the proposer that made the proposal. CPCA shall keep a list of returned proposals in the file for the solicitation.

(3) Except as provided in subsections (4) and (5) below, a Department that procures Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract that is subject to these Rules may not:

(a) Procure the Personal Services from a contractor or an affiliate of a contractor who is a party to the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services; or

(b) Procure the personal services through the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services.

(4) Subsection (3) of this section does not apply to a Procurement of both design services and construction services through a single "Design-Build" Procurement as defined in Rule 49-0610 including a Procurement of an Energy Savings Performance Contract, provided, however, the restrictions in subsection (3) do apply to a Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement.

(5) Subsection 3 of this section does not apply to a Procurement of both pre-construction services and construction services through a single "Construction Manager/General Contractor" Procurement, as defined in Rule 49-610as defined in OAR 137-049-0610. Provided, however, the restrictions of subsection 3 do apply to a Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Contract or performance under such a Contract resulting from a Construction Manager/General Contractor Procurement.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A. 065, 279C.100-279C.125 and Oregon Laws 2009, chapter 880, section 11.

48-0200 Direct Appointment Procedure

(1) Departments may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these Rules if:

(a) The Estimated Fee to be paid under the Contract does not exceed $10,000; or

(b) An emergency exists; or

(c) The Architectural, Engineering, Land Surveying or Related Services to be performed under the Contract:

(A) Consist of, or are related to, Architectural, Engineering, Land Surveying or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Land Surveying or Related Services rendered under the earlier Contract; and

(B) The Department used either the Formal Selection Procedure under Rule 48-0220 or the Informal Selection Procedure applicable to selection of the Consultant at the time of original selection, to select the Consultant for the earlier Contract.

(2) The Departments may select Consultants for Contracts under this Rule from the following sources:

(a) The County's current list of Consultants;

(b) A list of Consultants from another public jurisdiction; or

(c) Consultants offering the required Architectural, Engineering, Land Surveying or Related Services that Departments reasonably can identify under the circumstances.

(3) If the County estimates that the fee for the Work will not exceed $10,000, then, except for Work described in subsection (1)(b) or (c) of this section, the Direct Appointment shall be made to an MBE, WBE or ESB Consultant certified by the State of Oregon for the type or Work required unless such Consultant is not available. A Consultant shall be considered "not available" if Consultants certified by the State for the type of Work required who are located within 75 miles from the place where the Contract is to be performed, have been advised of the opportunity, have been given a reasonable period of time under the circumstances to respond and have failed or declined to respond. In such event, a Direct Appointment then may be made to any other qualified Consultant.

(4) Selection of a Contractor for Direct Appointment under this Rule shall be competitive to the extent practicable and may be based on criteria which include but are not limited to the Consultant's availability, capabilities, staffing, experience, and compensation requirements and the location of the project.

(5) The Department shall direct Negotiations with Consultants selected under this Rule toward obtaining Written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Land Surveying or Related Services required under the Contract that is fair and reasonable to the Department as determined solely by the Department, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Land Surveying or Related Services; and

(c) Any other provisions the Department believes to be in the Department's best interest to negotiate.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070
Stats. Implemented: ORS 279C110 and ORS 279C.115

48-0210 Informal Selection Procedure

(1) Departments may use the Informal Selection Procedure described in this Rule to obtain a Contract if the Estimated Fee is expected to not exceed $150,000.

(2) For contracts between $10,000 and $75,000 the following consultant solicitation procedure applies:

(a) Proposals shall be solicited from a minimum of three (3) Consultants.

(b) Of the three Proposals sought, one shall be obtained from an MBE, one from a WBE, and one from an ESB.

(c) If a Proposal is not available in a particular category from an MBE, WBE, or ESB Consultant certified by the State of Oregon for the type of work required, an additional Proposal shall be obtained from one of the other categories. If three Proposals are not available from all of the categories combined, the remaining Proposal(s) may be obtained from any other Consultant.

(d) A Proposal shall be "not available" in a specific category if all Consultants in that category (MBE, WBE, or ESB) certified by the State in that category and located within 75 miles from the place where the Contract is to be performed, have been advised of the contracting opportunity, have been given a reasonable period of time under the circumstances to submit a Proposal, and have failed or declined to provide a Proposal within the time specified.

(3) For contracts in excess of $75,000 but not exceeding $150,000 a minimum of three (3) informal proposals shall be solicited from consultants who can reasonably be expected to provide the required services. One (1) of the three consultants contacted shall be a MBE, WBE or ESB consultant if available (see (2) (d) above).

(4) Departments using the Informal Selection Procedure shall:

(a) Create a Request for Proposals that includes at a minimum the following:

(A) A description of the Project for which Consultant's Architectural, Engineering, Land Surveying or Related Services are needed and a description of the Architectural, Engineering, Land Surveying or Related Services that will be required under the resulting Contract;

(B) Anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) Date and time Proposals are due and other directions for submitting Proposals;

(E) A statement that Proposers responding to the RFP do so solely at their expense, and the Department is not responsible for any Proposer expenses associated with the RFP;

(F) Criteria upon which most qualified Consultant will be selected. Selection Criteria may include:

(i) Amount and type of resources and number of experienced staff Consultant has available to perform the Architectural, Engineering, Land Surveying or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected Workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering and Land Surveying Services and Related Services;

(ii) Proposed management techniques for the Architectural, Engineering, Land Surveying or Related Services described in the Request for Proposals;

(iii) Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering, Land Surveying or Related Services, including but not limited to quality of Work, ability to meet schedules, cost control methods and Contract Administration practices;

(iv) A Consultant's approach to Architectural, Engineering, Land Surveying or Related Services described in the Request for Proposals and design philosophy, if applicable;

(v) Consultant's geographic proximity to and familiarity with the physical location of the Project;

(vi) Volume of Work, if any, previously awarded to Proposer, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;

(vii) A Consultant's ownership status and employment practices regarding Women, minorities and Emerging Small Businesses or historically underutilized businesses; and

(viii) Pricing policies, pricing proposals and other pricing information.

(b) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals.

(5) After it reviews and ranks each Proposer, the Department will begin negotiating a Contract with the highest ranked Proposer. The Department shall direct Negotiations toward obtaining Written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Land Surveying or Related Services required under the Contract that is fair and reasonable to the Department as determined solely by the Department, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Land Surveying or Related Services; and

(c) Any other provisions the Department believes to be in the Department's best interest to negotiate.

(6) The Department shall, either orally or in Writing, formally terminate Negotiations with the highest ranked Proposer if the Department and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Department may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, until Negotiations result in a Contract. If Negotiations with any of the top three (3) Proposers do not result in a Contract within a reasonable amount of time, the Department may end the particular informal Solicitation and thereafter may proceed with a new informal Solicitation under this Rule or proceed with a formal Solicitation under Rule 48-0220 (Formal Selection Procedure).

(7) The Department shall terminate the Informal Selection Procedure and proceed with the Formal Selection Procedure under Rule 48-0220 if the scope of the anticipated Contract is revised during Negotiations so that the Estimated Fee will exceed $150,000. Notwithstanding the foregoing, the Department may continue Contract Negotiations with the Proposer selected under the Informal Selection Procedure if the Department makes Written determinations that contracting with that Proposer will:

(a) Promote efficient use of the Department's resources and result in substantial cost savings to the Department; and

(b) Protect the integrity of the public contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the Award of the Contract.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070
Stats. Implemented: ORS 279C.110

48-0220 Formal Selection Procedure

(1) General. Departments shall use the Formal Selection Procedure described in this Rule to select Consultants if the Consultants cannot be selected under either Rule 48-0200 (Direct Appointment Procedure) or under Rule 48-0210 (Informal Selection Procedure). The Formal Selection Procedure may otherwise be used at Departments' discretion. For architectural, engineering or land surveying services Contracts that are subject to the provisions of ORS 279C.110(2) because the County is receiving funds from the State of Oregon that will be used to pay for all or a portion of the design and construction of the project and those funds exceed 10 percent of the value of the project and the project exceeds $900,000 the Department shall follow the selection process set forth in ORS 279C.110.

(2) Advertisement. Departments using the Formal Selection Procedure shall obtain Contracts through public advertisement of a Request for Proposals or a Request for Qualifications followed by a Request for Proposals.

(a) Advertisement of each RFP and RFQ shall be in accordance with the requirements of Rule 47-0300.

(A) CPCA shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFP or RFQ but in any event no fewer than fourteen (14) Days before the Closing date set forth in the RFP or RFQ.

(B) CPCA shall include a brief description of the following items in the advertisement:

(i) The Project;

(ii) A description of the Architectural, Engineering, Land Surveying or Related Services the Department seeks;

(iii) How and where Consultants may obtain a copy of the RFP or RFQ; and

(iv) The deadline for submitting a Proposal or response to the RFP or RFQ.

(3) Request for Qualifications Procedure. Departments may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the Department may issue an RFP for some or all of the Architectural, Engineering, Land Surveying or Related Services described in the RFQ.

(a) The Department shall include the following, at a minimum, in each RFQ:

(A) A brief description of the Project for which the Department is seeking Consultants;

(B) A description of the Architectural, Engineering, Land Surveying or Related Services the Department seeks for the Project;

(C) The deadline for submitting a response to the RFQ;

(D) A description of required Consultant qualifications for the Architectural, Engineering, Land Surveying or Related Services the Department seeks;

(E) The RFQ evaluation criteria, including weights or points applicable to each criterion;

(F) A statement whether or not the Department will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Land Surveying or Related Services described in the RFQ and if a pre-qualification meeting will be held, the date, time and location of the meeting and whether or not attendance is mandatory; and

(G) A Statement that Consultants responding to the RFQ do so solely at their expense, and the Department is not responsible for any Consultant expenses associated with the RFQ.

(b) The Department may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultant's general qualifications and related performance information;

(B) A description of Consultant's specific qualifications to perform the Architectural, Engineering, Land Surveying or Related Services described in the RFQ including Consultant's available resources and recent, current and projected workloads;

(C) A list of similar Architectural, Engineering, Land Surveying or Related Services and references concerning past performance, and a copy of all records, if any, of Consultant's performance under Contracts with any other contracting agency;

(D) The number of Consultant's experienced staff available to perform the Architectural, Engineering, Land Surveying or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of their time that such personnel would spend on those services;

(E) Consultant's approach to Architectural, Engineering, Land Surveying or Related Services described in the RFQ and design philosophy, if applicable;

(F) Consultant's geographic proximity to and familiarity with the physical location of the Project;

(G) Consultant's ownership status and employment practices regarding Women, minorities and Emerging Small Businesses or historically underutilized businesses;

(H) Consultant's pricing policies, Proposals and other pricing information;

(I) Consultant's ability to assist a Department in complying with solar energy technology requirements of 2007 Oregon Law, Chapter 310; and

(J) Any other information the Department deems reasonable and necessary to evaluate Consultants' qualifications.

(c) RFQ Evaluation Committee. The Department shall establish an RFQ evaluation committee of at least three (3) individuals to review, score, and rank the responding Consultants according to the Solicitation criteria. The Department may appoint to the evaluation committee, Department employees, or employees of other public entities, with experience in architecture, engineering, or land surveying, Related Services, construction or public contracting. The Department may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. The Department shall designate one (1) member of the evaluation committee from the County as the evaluation committee chairperson.

(d) The Department may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to:

(A) Requiring Consultants responding to an RFQ to achieve a Threshold score before qualifying for placement on the short list;

(B) Placing a pre-determined number of the highest scoring Consultants on a short list;

(e) After the evaluation committee reviews, scores and ranks the responding Consultants, the Department shall establish a short list of at least three (3) qualified Consultants, provided however, that if four or fewer Consultants responded to the RFQ, then:

(A) The Department may establish a short list of fewer than three (3) qualified Consultants; or

(B) CPCA may cancel the RFQ and issue an RFP.

(f) No Consultant will be eligible for placement on the Department's short list established under Section (3) of this Rule if the Consultant or any of Consultant's principals, partners or associates is a member of the Department's RFQ evaluation committee.

(g) Except when the RFQ is cancelled, CPCA shall provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants through Request for Proposals. Departments shall use the following procedure when issuing an RFP for a Contract described in Section (1) of this Rule.

(a) RFP Required Contents. Departments using the Formal Selection Procedure shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the Project and the specific Architectural, Engineering, Land Surveying or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Land Surveying or Related Services sought will be performed.

(B) The RFP evaluation process and criteria which will be used to select the most qualified Proposer, including the number of points applicable to each criterion. If the RFP does not indicate the applicable number of points, then each criterion is worth the same number of points. Evaluation criteria may include, but are not limited to, the following:

(i) Proposer's availability and capability to perform the Architectural, Engineering, Land Surveying or Related Services described in the RFP;

(ii) Experience of Proposer's key staff persons in providing similar Architectural, Engineering, Land Surveying or Related Services on comparable Projects;

(iii) The amount and type of resources, and number of experienced staff persons Proposer has available to perform the Architectural, Engineering, Land Surveying or Related Services described in the RFP;

(iv) The recent, current and projected workloads of the staff and resources referenced in this Section;

(v) The proportion of time Proposer estimates that the staff referenced in this Section, would spend on the Architectural, Engineering, Land Surveying or Related Services described in the RFP;

(vi) Proposer's demonstrated ability to successfully complete similar Architectural, Engineering, Land Surveying or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under Rule 48-0120 (List of Interested Consultants; Performance Record);

(vii) References and recommendations from past clients;

(viii) Proposer's performance history in meeting deadlines, submitting accurate estimates, producing high quality Work, and meeting financial obligations;

(ix) Status and quality of any required license or certification;

(x) Proposer's knowledge and understanding of the Project and Architectural, Engineering, Land Surveying or Related Services described in the RFP as shown in Proposer's approach to staffing and scheduling needs for the Architectural, Engineering, Land Surveying or Related Services and proposed solutions to any perceived design and constructability issues;

(xi) Results from interviews, if conducted;

(xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Land Surveying or Related Services described in the RFP;

(xiii) Any other criteria relevant to the Project and Architectural, Engineering, Land Surveying or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers;

(xiv) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services; and

(xv) If interviews are possible, the weight or points applicable to the potential interview;

(C) The RFP shall include at a minimum the following provisions:

(i) The date and time Proposals are due, and the delivery location for Proposals;

(ii) Reservation of the right to seek clarifications of each Proposal;

(iii) Reservation of the right to negotiate a final Contract that is in the best interest of the County;

(iv) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at anytime if doing either would be in the public interest;

(v) A Statement that Proposers responding to the RFP do so solely at their expense, and the County is not responsible for any Proposer expenses associated with the RFP;

(vi) A statement directing Proposers to the protest procedures set forth in these Rules;

(vii) Any other special Contract requirements;

(viii) A statement whether or not a pre-Proposal meeting will be held for all interested Consultants to discuss the Project and the Architectural, Engineering, Land Surveying or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;

(ix) A request for any other information reasonably necessary to permit the County to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Land Surveying or Related Services described in the RFP;

(x) A sample form of the Contract; and

(xi) Pricing policies, pricing proposals and other pricing information.

(5) **RFP Evaluation Committee.** The Department shall establish a committee of at least three (3) individuals to review score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Department may include the same members who served on the RFQ evaluation committee. The Department may appoint to the evaluation committee, Department employees, or employees of other public agencies, with experience in architecture, engineering, land surveying, related services, construction or public contracting.

(6) No Proposer will be eligible for Award of the Contract under the RFP if the Proposer or any of Proposer's principals, partners or associates is a member of the RFP evaluation committee for the Contract.

(7) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it shall Award up to the number of points indicated in the RFP for the anticipated interview.

(8) The evaluation committee shall provide to the CPCA Manager the results of the scoring and ranking for each Proposer.

(9) **Initial Negotiations.** The Department will begin negotiating a Contract with the highest ranked Proposer. The Department shall direct Negotiations toward obtaining Written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Land Surveying or Related Services required under the Contract that is fair and reasonable to the Department as determined solely by the Department, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Land Surveying or Related Services; and

(c) Any other provisions the Department believes to be in the Department's best interest to negotiate.

(10) **Subsequent Negotiations.** The Department shall, either orally or in Writing, formally terminate Negotiations with the highest ranked Proposer if the Department and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Department may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with subsection (9) of this Rule, until Negotiations result in a Contract. If Negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the Department may determine to end the particular formal Solicitation. In such event, CPCA shall issue an appropriate notice of the Department's decision. Nothing in this Rule precludes the County from proceeding with a new formal Solicitation for the same Architectural, Engineering, Land Surveying or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070
Stats. Implemented: ORS 279C.110

48-0230 Ties Among Proposers

(1) If the County is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the County may select a candidate through any process that the County believes will result in the best value for the County, taking into account the scope, complexity and nature of the Architectural, Engineering, Land Surveying or Related Services. The process shall instill public confidence through ethical and fair dealing, honesty and good faith on the part of the Department and Proposers and shall protect the integrity of the public contracting process. Once a tie is broken, the County and the selected Proposer shall proceed with Negotiations under Rules 48-0210(3) or 48-0220(9), as applicable.

(2) If the County is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking, following all allowable methods of proposal evaluation including oral evaluations or interviews that two or more Proposers are equal in terms of price or are equal in terms or price and qualifications, then the County shall follow the procedure set forth in Rule 46-0300.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070
Stats. Implemented: ORS 279C.110

48-0240 Protest Procedures

(1) **RFP Protest and Request for Change.** Consultants may submit a Written protest of anything contained in an RFP and may request a change to any provision, Specification or Contract term contained in an RFP, no later than ten (10) Days prior to the date Proposals are due unless a different deadline is indicated in the RFP. Each protest and request for change shall include the reasons for the protest or request, and any proposed changes to the RFP provisions, Specifications or Contract terms. The CPCA Manager will not consider any protest or request for change that is submitted after the submission deadline.

(2) **Protest of Consultant Selection.** The CPCA Manager shall provide notice to all Proposers of intent to Award the Contract to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to CPCA Manager no later than seven (7) Days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest shall claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Land Surveying or Related Services described in the RFP. The CPCA Manager will not consider any protest that is submitted after the submission deadline.

(3) **Decision.** The CPCA Manager shall resolve all timely submitted protests within a reasonable time following receipt of the protest and once resolved, shall promptly issue a Written decision on the protest to the Proposer who submitted the protest.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070
Stats. Implemented: ORS 279A.065, ORS 279C.110

48-0250 Solicitation Cancellation; Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility for Costs

The CPCA Manager may cancel, delay or suspend a Solicitation, RFQ, or other preliminary Procurement document, whether related to a direct appointment, informal selection procedure or formal selection procedure, or reject all Proposals, responses to RFPs or RFQs, responses to other preliminary Procurement documents, or any combination of the foregoing, if CPCA believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension or rejection, the County is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension or rejection. Consultants responding to solicitations, RFQs, or other preliminary Procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFPs or RFQs, or responses to other preliminary Procurement documents.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070
Stats. Implemented: ORS 279A.065

48-0310 Contract Reinstatements; Effect of Material Alteration or Delay of Project

(1) **Compensation.** When a Contract expires and is reinstated pursuant to this Rule, the County may compensate the Consultant for Architectural, Engineering, Land Surveying or Related Services performed in the interim between the expiration of the original Contract and the reinstatement.

(2) **Agreement-to-Agree Reinstatement.** When an Agreement-To-Agree expires and is reinstated pursuant to this Rule, the County may compensate the Consultant for Architectural, Engineering and Land Surveying and Related Services performed under a Contract resulting from a Work order issued under the Agreement-To-Agree, during the time period between the expiration of the Agreement-To-Agree and the reinstatement.

(3) **Reasons.** Contracts or Agreements-To-Agree may be reinstated for any of the following reasons:

(a) When an administrative error or oversight is discovered, the Department may submit, for approval by the CPCA Manager, an Amendment to reinstate the Contract; or

(b) If the project for which the Consultant has been selected and awarded becomes inactive, or is terminated, whether due to project phasing, or insufficient appropriations, separately or combined, the Department may, if the project is reactivated, retain the same Consultant to complete the Architectural, Engineering, Land Surveying Related Services required under the Contract if the Department Director makes Written findings that retaining the Consultant:

(A) Is not likely to encourage favoritism or substantially diminish competition in the awarding of Architectural, Engineering, Land Surveying or Related Services Contracts;

(B) Will result in substantial cost savings to the County; and

(C) Is in the best interest of the County.

(4) Effect of Material Alteration or Delay of Project. If the Department delays or delays and then materially alters a Project for which the County has entered into a Contract, and the Contract has expired or been terminated, the County may enter into a Contract with the same Consultant to perform either the same Architectural, Engineering, Land Surveying or Related Services described in the Contract or Architectural, Engineering, Land Surveying or Related Services as amended to reflect the Department's material alteration of the Project if no more than one year has passed since expiration or termination of the Contract and the Department makes Written findings that entering a Contract with Consultant:

(a) Will promote efficient use of public funds and resources and result in substantial cost savings;

(b) Will not encourage favoritism in the contracting process; and

(c) Will not substantially diminish competition for future Contracts with Consultants.

Stat. Auth.: ORS 279A.050; ORS 279A.065(5)(a); and ORS 279A.070
Stats. Implemented: ORS 279A.065, ORS 279A.070, ORS 279C.110, and ORS 279A.140

48-0315 Special Contract Processes

(1) Consultants for Agreements-To-Agree shall be selected, and the Department shall obtain Architectural, Engineering, Land Surveying or Related Services by selecting a Consultant or Consultants in the following manner:

(a) The Department selects one (1) or more Consultants under the applicable provisions of Rules 48-0200, 48-0210, or 48-0220.

(b) The Department develops documents that include a specific Statement of Work for each anticipated Contract under the Agreement-To-Agree document.

(c) When the Department selects more than one (1) Consultant under the Agreement-To-Agree Solicitation process, the Department shall identify a standard in the Solicitation Document and the Agreement-to-Agree to be used in assigning particular Architectural, Engineering, Land Surveying or Related Services under the Agreements-To-Agree.

(2) Design-Build Contracts involve the provision of both design and construction services for Public Improvements under one (1) Contract. Under most circumstances, Design-Build Contracts are Mixed Contracts with the predominate purpose of the Contract involving construction of the Public Improvement. If the predominate purpose of the Contract is to obtain Architectural, Engineering, Land Surveying or Related Services, selection may proceed under these Division 48 Rules. Otherwise, the selection process will require an Exemption from Competitive Bidding under Division 49, unless the Design-Build Contract is to be awarded to the Responsible Bidder submitting the lowest Responsive Bid.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070
Stats. Implemented: ORS 279C.110 and ORS 279C.115

48-0320 Contract Amendments

(1) The County may amend any Contract if the County, in its sole discretion, determines that the amendment is within the scope of services contemplated under the Solicitation and that the amendment would not materially impact the field of competition for the services described in the Solicitation. In making this determination, the Department shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the Solicitation if the Department reasonably believes that the number of Proposers would not significantly increase if the Solicitation were re-issued to include the additional services.

(2) The County may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies which affect performance of the original Contract.

(3) All amendments to Contracts shall be in Writing, shall be Signed by an authorized representative of the Consultant and the Department.

(4) A Department shall have authority to authorize increases resulting from amendments to a Contract provided that the total of all such increases shall not exceed 20 percent of the original Contract Price. For contracts of $150,000 or less increases in excess of the 20 percent limit shall be submitted to the CPCA Manager for approval prior to authorization of performance of the Work. For contracts in excess of $150,000, increases in excess of the 20 percent limit shall be submitted to the CPCA Manager to obtain approval by the Board prior to authorization of performance of the Work.

(5) Every Contract for Architectural, Engineering, Land Surveying and Related Services shall comply with the requirements of this Rule including Contracts advertised, or if not advertised, entered into prior to March 1, 2005.

DIVISION 49 GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES

49-0100 Application

(1) These Division 49 Rules apply to Public Improvement Contracts as well as Public Contracts for ordinary construction Services that are not Public Improvements as identified.

(2) These Division 49 Rules address matters covered in ORS Chapter 279C (with the exception of Architectural, Engineering, Land Surveying and Related Services, all of which are addressed in Division 48.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

49-0110 Policies

In addition to the general Code policies set forth in ORS 279A.015, the ORS 279C.300 policy on competition and the ORS 279C.305 policy on least-cost for Public Improvements apply to these Division 49 Rules.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.300 & ORS 279C.305

49-0130 Competitive Bidding Requirements

A Department shall solicit Bids for Public Improvement Contracts by Invitation to Bid, except as otherwise allowed or required pursuant to ORS 279C.335 on Competitive Bidding exceptions and Exemptions, 279A.030 on federal law overrides or 279A.100 on affirmative action. Also see Rule 49-0600 to 49-0690 regarding the use of Alternative Contracting Methods and the Exemption process.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335

49-0140 Contracts for Construction Other Than Public Improvements

(1) **Procurement Under ORS Chapter 279B.** Pursuant to ORS 279C.320, Public Contracts for construction services that are not Public Improvement Contracts may be procured and amended as general Trade Services under the provisions of Division 47 rather than under the provisions of these Division 49 Rules. This includes, but is not limited to, Contracts for minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement. Emergency Contracts for construction services are not Public Improvement Contracts and are regulated under Rule 47-0280.

(2) **Application of ORS Chapter 279C.** Non-procurement provisions of ORS Chapter 279C and these Division 49 Rules may still be applicable to the resulting Contracts. See, for example, particular statutes on Disqualification (ORS 279C.440, 445 and 450); Legal Actions (ORS 279C.460 and 465); Required Contract Conditions (ORS 279C.505, 515, 520 and 530); Hours of Labor (ORS 279C.540 and 545); Retainage (ORS 279C.550, 560 and 565); Subcontracts (ORS 279C.580); Action on Payment Bonds (ORS 279C.600, 605, 610, 615, 620 and 625); Termination (ORS 279C.650, 650, 660 and 670); and all of the Prevailing Wage Rates requirements (ORS 279C.800 to 870) for Public Works Contracts.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.320

49-0150 Emergency Contract Procedure; Waiver of Bond Requirements

(1) **Emergency Procedure.** In the event of an Emergency that requires prompt execution of a Public Contract for Emergency construction or repair Work the procedures in Rules 47-0280 and 47-0800(4) shall be followed.

(2) **Waiver of Bond Requirements.** The Emergency declaration may also state that the County waives the requirement of furnishing a performance bond, payment bond and BOLI Public Works bond for the Emergency Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335 and 279C.380

49-0160 Informal Quotes and Amendments

(1) **General.** Public Improvement Contracts estimated by the Department not to exceed $75,000 may be Awarded in accordance with Informal procedures for Quotes established by this Rule. A Procurement may not be artificially divided or fragmented so as to constitute an Informal Quote under this Rule or to circumvent Competitive Bidding requirements.

(2) **Selection Criteria.** The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.

(3) **Request for Quotes.** Departments shall utilize Written requests for Quotes for all projects estimated by the Department to exceed $75,000 or if criteria other than cost will be used to award the Contract regardless of Contract amount. Written request for Quotes shall include:

(a) The selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking;

(b) A complete description of the proposed Work;

(c) Location and deadline for submittal of Quotes;

(d) The prevailing wage provisions of ORS 279C.800 to 279C.870, when applicable;

(A) If no federal funds are being used to fund the work, the wage rates established under ORS 279C.815(2)(a) shall be attached to the contract.

(B) If federal funds are being used to fund the work, the wage rates established under ORS 279C.815(2)(b) shall be attached to the contract.

(e) The performance bond, payment bond and BOLI Public Works bond requirements of ORS 279C.380 and 279C.830, when applicable;

(f) The contractor registration requirements of ORS 701;.and

(g) Any other law applicable to such a Contract.

(4) Number of Quotes; Record Required. Departments may let Public Improvement Contracts between $5,000 and the limits set forth in subsection (1) of this Rule without formal Competitive Bidding if the Contract is for a single project and is not a component of or related to any other project and the requirements of this subsection are met. When the amount of the Contract does not exceed $5,000 and the Contract otherwise meets the requirements of this section, Departments are exempt from Competitive Solicitation; however, Departments shall where practicable, obtain Informal Quotes. When the amount of the Contract is more than $5,000 but equal to or less than the limits set forth in subsection (1) of this Rule, Informal Quotes shall be solicited in the following manner:

(a) A minimum of three (3) Quotes shall be solicited from vendors who can reasonably be expected to provide a Quote. If three (3) Quotes are not available, a lesser number will suffice provided a written record is made of the effort to obtain the Quotes.

(b) Of the three (3) Quotes provided for in the previous subsection, one (1) shall be obtained from an MBE, one (1) from a WBE, and one (1) from an ESB. More than three (3) Quotes may be solicited providing that the additional Quotes are solicited from MBEs, WBEs and ESBs. Additional Quotes shall not be solicited except as provided in the following subsection.

(c) If a Quote is not available in a particular category from an MBE, WBE, or ESB Contractor certified by the State of Oregon for the type of Work required, an additional Quote shall be obtained from one (1) of the other categories. If three (3) Quotes are not available from all of the categories combined, the remaining Quote(s) may be obtained from any other contractor. A Quote shall be "not available" in a specific category (MBE, WBE, or ESB) if all contractors certified by the State in that category and located within 75 miles from the place where the Contract is to be performed, have been advised of the contracting opportunity, have been given a reasonable period of time under the circumstances to make a Quote, and have failed to provide a Quote within the time specified.

(d) If three (3) Quotes are not reasonably available from all sources, the Department shall make a Written record of the effort made to obtain those Quotes.

(5) **Award.** If Awarded, the Department shall Award the Contract to the prospective contractor whose Quote will best serve the interests of the Department, taking into account price and any other selection criteria included in the Solicitation. If Award is not made to the Offeror offering the lowest price, the Department shall make a written record of the basis for Award and place the record in the Procurement File.

(6) **BOLI Notification.** The Department shall provide notification of Award to BOLI as required by ORS 279C.835.

(7) **Price Increases.** Public Improvement Contracts obtained by competitive Quotes may be increased above the initial amount of Award by Department issuance of a Change to the Work or Amendment, pursuant to Rule 49-0910, within the following limitations:

(a) A Department shall have authority to authorize increases resulting from all amendments to a Contract up to 20 percent of the original Contract Price, except for Contracts for the renovation or remodeling of a building in which case the aggregate increase resulting from all amendments shall not exceed 33 percent of the initial Contract Price. The CPCA Manager shall have authority to approve increases in excess of these limits so long as the total Contract amount does not exceed $75,000 for Public Improvement

Contracts. Increases in excess of these limits shall be submitted to the CPCA Manager to obtain approval by the Board prior to authorization of performance of the Work.

(8) The limitations in the previous section shall not apply where unit prices or additive alternates are provided for in the Contract which establishes the cost basis for the additional Work or product and the Contract includes the terms and conditions for provision of the additional Work.

(9) Exemption from Requirement to Solicit Informal Quotes. A Department may submit a Written request to the CPCA Manager seeking an Exemption from the requirement to solicit Informal Quotes. The request shall include description of the proposed selection procedure, a description of the Public Improvement and the circumstances that justify exemption from the requirement to solicit quotes. The CPCA Manager may require any additional information deemed necessary to evaluate the request for approval of the Exemption.

Stat. Auth.: ORS 279A.065
Stats. Implemented: Sections 132, 133 and 332a, Ch. 794 Oregon Laws 2003. Temporary provisions relating to competitive Quotes were not codified but compiled as Legislative Counsel notes following ORS 279C.410.

DIVISION 49 FORMAL PROCUREMENT RULES

49-0200 Solicitation Documents for Invitations to Bid and Requests for Proposals

(1) Solicitation Document. The Solicitation Document shall include the following:

(a) **General Information.**

(A) Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other Contract documents;

(B) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) That statements made by the County's representatives at the conference are not binding upon the County unless confirmed by Written Addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors shall be prequalified if prequalification is a requirement;

(D) The name and title of the Sr. Buyer as the person designated for receipt of Offers and CPCA contact Person (if different);

(E) Instructions and information concerning the form and submission of Offers, including the CPCA address to which Offers shall be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by Facsimile (See Rule 49-0300 regarding Facsimile Bids or Proposals and Rule 49-0310 regarding Facsimile Bids and Proposals);

(F) The time and date of Closing after which the County will not accept Offers, which time shall be not less than five (5) Days after the date of the last publication of the advertisement. Although a minimum of five (5) Days is prescribed, Departments are encouraged to use at least a 14 Day Solicitation period when feasible. If the Department is issuing an ITB that may result in a Public Improvement Contract with a value in excess of $100,000, CPCA shall designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and Rule 49-0360. For timing issues relating to Addenda, see Rule 49-0250;

(G) The time, date and place of Opening;

(H) The office where the Specifications for the Work may be reviewed;

(I) A statement that each Bidder to an ITB shall identify whether the Bidder is a "Resident Bidder," as defined in ORS 279A.120;

(J) If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148), a statement that no Offer will be received or considered by the County unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.838, ORS 279C.840 or 40 U.S.C. 3141 to 3148.";

(K) A statement that the County will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board, as specified in Rule 49-0230;

(L) Whether a Contractor or a subcontractor under the Contract shall be licensed under ORS 468A.720 regarding asbestos abatement projects;

(M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4);

(N) How the County will notify Offerors of Addenda and how the County will make Addenda available (See Rule 49-0250); and

(O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in Rule 49-0360.

(b) Evaluation Process:

(A) A statement that the County may reject any Offer not in compliance with all prescribed public contracting procedures and requirements including the requirement to demonstrate the Bidder's responsibility under Rule 49-0390(2), and may reject for good cause all Offers after finding that doing so is in the public interest;

(B) The anticipated Solicitation schedule, deadlines, protest process and evaluation process;

(C) Evaluation criteria, including the relative value applicable to each criterion, that the Department will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of Competitive Proposals is authorized under ORS 279C.335 and Rule 49-0620), along with the process the Department will use to determine acceptability of the Work;

(i) If the Solicitation Document is an Invitation to Bid, any special price evaluation factors shall be set forth in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the Department has available concerning future use;

(ii) If the Solicitation Document is a Request for Proposals, the Department shall refer to the additional requirements of Rule 49-0650; and

(c) **Contract Provisions.** The Solicitation Document shall include all Contract terms and conditions, including warranties, insurance and bonding requirements, that the Department considers appropriate for the Public Improvement project. The Solicitation Document shall also include all applicable Contract provisions required by Oregon law as follows:

(A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));

(B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));

(C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));

(E) Conditions concerning payment of claims by the County (ORS 279C.515(1));

(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;

(G) Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));

(H) Hours of labor in compliance with ORS 279C.520;

(I) Environmental and natural resources regulations (ORS 279C.525);

(J) Payment for medical care and attention to employees (ORS 279C.530(1));

(K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject Workers who Work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));

(L) Maximum hours, holidays and overtime (ORS 279C.540);

(M) Time limitation on claims for overtime (ORS 279C.545);

(N) Requirement to pay prevailing wage rates (ORS 279C.800 to 279C.870);

(i) If no federal funds are being used to fund the work, the wage rates established under ORS 279C.815(2)(a) shall be attached to the contract.

(ii) If federal funds are being used to fund the work, the wage rates established under ORS 279C.815(2)(b) shall be attached to the contract.

(O) BOLI Public Works bond (ORS279C.830 (3))

(P) Retainage (ORS 279C.550 to 279C.570);

(Q) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(R) Contractor's relations with subcontractors (ORS 279C.580);

(S) Notice of claim (ORS 279C.605);

(T) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(2) Assignment or Transfer Restricted. The Solicitation and the Contract shall also provide that:

(a) The Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the prior Written consent of the County.

(b) Unless otherwise agreed by the County in Writing, such consent shall not relieve the Contractor of any obligations under the Contract and any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract.

(c) If the County consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the County for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the County otherwise agrees in Writing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.110, ORS 279A.120, ORS 279C.365, ORS 279C.370, ORS 279C.375 ORS 279C.390, ORS 279C.505 to 580, ORS 279C.605, 279C.830, ORS 305.385, ORS 468A.720, ORS 701.005 & ORS 701.055

49-0210 Notice and Advertising Requirements; Posting

(1) Notice and Distribution Fee. Notice shall be given as set forth below in subsections (a) through (c), to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice shall indicate where, when, how and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The Notice may contain any other appropriate information. CPCA may charge a fee or require a deposit for the Solicitation Document. CPCA may furnish Notice using any method determined to foster and promote competition, including:

(a) Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in County Procurements;

(b) Placing Notice on the CPCA web site; or

(c) Placing Notice on ORPIN.

(2) Advertising. Pursuant to ORS 279C.360 and this Rule, CPCA shall advertise every Solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract.

(a) CPCA may publish by Electronic Advertisement. In addition CPCA may publish the advertisement for Offers in a newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as CPCA may determine to be necessary or desirable to foster and promote competition.

(b) In addition to the publication required under subsection 2(a), CPCA shall publish an advertisement for Offers in at least one (1) trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of $75,000.

(c) All advertisements for Offers shall set forth:

(A) The Public Improvement project;

(B) The office where Contract terms, conditions and Specifications may be reviewed;

(C) The date that Persons shall file applications for prequalification, if prequalification is a requirement, and the class or classes of Work for which Persons shall be prequalified;

(D) The scheduled Closing date, which shall not be less than five Days after the date of the last publication of the advertisement;

(E) The name and address of the CPCA Manager;

(F) The scheduled Opening; and

(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.360 & ORS 200.035

49-0220 Prequalification of Offerors

(1) **Mandatory Prequalification.** A Department may require mandatory prequalification of Offerors for contracts to construct Public Improvements or to perform Public Works on forms prescribed by CPCA. Applications for Prequalification shall be postmarked not less than ten (10) Days prior to the Solicitation Closing date unless otherwise provided in the Solicitation Document. A Department shall indicate in the Solicitation Document if it will require mandatory prequalification. Mandatory prequalification is when a Solicitation Document conditions a Person's submission of an Offer upon the Person's prequalification. The CPCA Manager shall not consider an Offer from a Person that is not prequalified if the Department required prequalification.

(2) **Prequalification Presumed.** If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror shall be rebuttably presumed qualified to perform similar Work for the County.

(3) **Standards for Prequalification.** A Person may prequalify by demonstrating to the Department's satisfaction that the Person meets the standards of responsibility under Rule 49-0390(2).

(4) **Notice of Denial.** If a Person fails to prequalify, CPCA shall notify the Person, specifying the reasons under subsection (3) of this Rule for denial of prequalification and informing the Person of the right to appeal and the right to a hearing under ORS 279C.445 and 279C.450.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.430 & ORS 279C.435

49-0230 Eligibility to Bid or Propose; Registration or License

(1) **Construction Contracts.** The CPCA Manager shall not consider a Person's Offer to do Work as a Contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Board at the time the Offer is made.

(2) **Landscape Contracts.** The CPCA Manager shall not consider a Person's Offer to do Work as a landscape contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape contractors license issued pursuant to ORS 671.560 by the State Landscape Contractors Board at the time the Offer is made.

(3) **Non-complying Entities.** The CPCA Manager shall deem an Offer received from a Person that fails to comply with this Rule nonresponsive and shall reject the Offer as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding agencies.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, ORS 671.530 & ORS 701.055

49-0240 Pre-Offer Conferences

(1) **Purpose.** The County may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information or to conduct site inspections.

(2) **Required attendance.** The County may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of an offering firm is present.

(3) **Scheduled time.** If the County holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) **Statements Not Binding.** Statements made by a County representative at the pre-Offer conference do not change the Solicitation Document unless the County confirms such statements with a Written Addendum to the Solicitation Document.

(5) **Department Announcement.** The County shall set forth notice of any pre-Offer conference in the Solicitation Document in accordance with Rule 49-0200(1)(a)(B).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365 and 279C.370

49-0250 Addenda to Solicitation Documents

(1) **Issuance; Receipt.** The CPCA Manager may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the CPCA Manager otherwise specifies in the Addenda or in the Solicitation Document.

(2) **Notice and Distribution.** The CPCA Manager shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in Rule 49-0210(1). The Solicitation Document shall specify how the CPCA Manager will provide notice of Addenda and how the CPCA Manager will make the Addenda available (see, Rule 49-0200(1)(a)(N). For example, "The CPCA Manager will not mail notice of Addenda, but will publish notice of any Addenda on CPCA Website. Addenda may be downloaded off the CPCA Website. Offerors should frequently check the CPCA Website until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."

(3) **Timelines; Extensions.** The CPCA Manager shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The CPCA Manager may extend the Closing date if the CPCA Manager determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the Department shall not issue Addenda less than five (5) Days before the Closing unless the Addendum also extends the Closing.

(4) **Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in Rule 49-0260, by the close of the next Business Day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under Rule 49-0260, whichever date is later. The CPCA Manager shall consider only an Offeror's request for change or protest to the Addendum; the CPCA Manager shall not consider a request for change or protest to matters not added or modified by the Addendum, unless the Offeror submits the request for change or protest before the deadline for receipt of request for change or protests as set forth in Rule 49-0260(2) and (3).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.395 & ORS 279A.065

49-0260 Request for Clarification or Change; Solicitation Protests

(1) Clarification. Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the CPCA Manager clarify any provision of the Solicitation Document. The CPCA Manager's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the County unless the CPCA Manager amends the Solicitation Document by Addendum.

(2) **Request for Change.**

(a) Delivery. An Offeror may request in writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror shall deliver the Written request for change to the CPCA Manager not less than ten (10) Days prior to Closing;

(b) Content of Request for Change.

(A) An Offeror's written request for change shall include a statement of the requested change(s) to the Contract terms and conditions, including any Specifications, together with the reason for the requested change.

(B) An Offeror shall mark its request for change as follows:

(i) "Contract Provision Request for Change"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(3) Protest.

(a) Delivery. An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror shall deliver a Written protest on those matters to the CPCA Manager not less than ten (10) Days prior to Closing;

(b) Content of Protest.

(A) An Offeror's Written protest shall include:

(i) A detailed statement of the legal and factual grounds for the protest;

(ii) A description of the resulting prejudice to the Offeror; and

(iii) A statement of the desired changes to the Contract terms and conditions, including any Specifications.

(B) An Offeror shall mark its protest as follows:

(i) "Contract Provision Protest"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document)

(4) County Response. The CPCA Manager is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The CPCA Manager shall provide notice to the applicable Person if it entirely rejects a protest. If the CPCA Manager agrees with the Person's request or protest, in whole or in part, the CPCA Manager shall either issue an Addendum reflecting its determination under Rule 49-0260 or cancel the Solicitation under Rule 49-0270.

(5) Extension of Closing. If the CPCA Manager receives a Written request for change or protest from an Offeror in accordance with this Rule, the CPCA Manager may extend Closing if the CPCA Manager determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.345 & ORS 279C365

49-0270 Cancellation of Solicitation Document

(1) Cancellation in the Public Interest. The CPCA Manager may cancel a Solicitation for good cause if the CPCA Manager finds that cancellation is in the public interest. The reasons for cancellation shall be made part of the Procurement File.

(2) Notice of Cancellation. If the CPCA Manager cancels a Solicitation prior to Opening, the CPCA Manager shall provide Notice of cancellation in the same manner as provided in Rule 49-0210(1). Such notice of cancellation shall:

(a) Identify the Solicitation;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) Disposition of Offers.

(a) Prior to Offer Opening. If the CPCA Manager cancels a Solicitation prior to Offer Opening, the CPCA Manager shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the CPCA Manager shall open the Offer to determine the source and then return it to the Offeror.

(b) After Offer Opening. If the CPCA Manager cancels a Solicitation after Offer Opening, the CPCA Manager shall retain all such Offers as part of the Procurement File.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.395

49-0280 Offer Submissions

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract.

(a) In Competitive Bidding and Competitive Proposals, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for acceptance for the period specified in Rule 49-0410. The County may elect to accept the Offer at any time during the specified period, and the Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in Rule 49-0410, the County may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. See Rule 49-0650 on Requests for Proposals and Rule 49-0290 on Bid or Proposal Security. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are bound to an obligation to negotiate in good faith and only on those terms that the rules or the Solicitation Document has reserved for negotiation.

(2) Responsive Offer. The County may Award a Contract only to a Responsible Offeror with a Responsive Offer.

(3) Contingent Offers. Except to the extent that an Offeror is authorized to propose certain terms and conditions pursuant to Rule 49-0650, an Offeror shall not make an Offer contingent upon the acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(4) Offeror's Acknowledgement. By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits Proposal of alternative terms under Rule 49-0650, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the County in Writing.

(5) **Instructions**. An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Closing in accordance with the requirements for submitting an Offer under the Solicitation Document.

(6) **Forms.** An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

(7) **Documents.** An Offeror shall provide the County with all documents and Descriptive Literature required under the Solicitation Document.

(8) **Facsimile Submissions.** If the County permits Facsimile Offers in the Solicitation Document, the Offeror may submit Facsimile Offers in accordance with the Solicitation Document. The CPCA Manager shall not consider Facsimile Offers unless authorized by the Solicitation Document.

(9) **Product Samples and Descriptive Literature.** A Department may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The Department will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.

(10) **Identification of Offers**.

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the County, whichever is applicable.

(b) The County is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(11) **Receipt of Offers.** The Offeror is responsible for ensuring that CPCA receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365 &ORS 279C.375

49-0290 Bid or Proposal Security

(1) **Security Amount.** If the Department requires Bid or Proposal security, it shall be not more than 10% or less than 5% of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal together with all additive alternates. A Department shall not use Bid or Proposal security to discourage competition. The Solicitation Document shall clearly state any Bid or Proposal security requirements. The Offeror shall forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required performance bond, payment bond, BOLI Public Works bond and, any required proof of insurance. See ORS 279C.365(4), ORS 279C.385 and ORS 279C.830 .

(2) **Requirement for Bid Security (Optional for Proposals).** Except for Solicitations exempted under Rule 49-0460 (5), the Solicitation Document shall require Bid security for Solicitation of Bids for Public Improvements. The Solicitation Document may require Bid security even if the Board has exempted a class of Solicitations from Bid security. The County may require Proposal security in RFPs. See ORS 279C.400(5).

(3) **Form of Bid or Proposal Security.** Only the following forms of Bid or Proposal security may be accepted:

(a) A surety bond from a surety company authorized to do business in the State of Oregon;

(b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or

(c) A cashier's check or Offeror's certified check.

(4) **Return of Security.** The CPCA Manager shall return or release the Bid or Proposal security of the successful Offeror and all unsuccessful Offerors after a Contract has been fully executed and all required bonds and insurance have been provided, or after all Offers have been rejected. The CPCA Manager may return the Bid or Proposal security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the security of at least the Bidders with the three (3) lowest Bids, or the Proposers with the three (3) highest scoring Proposals, is retained pending execution of a Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, ORS 279C.385 & ORS 279C.390

49-0300 Facsimile Bids and Proposals

(1) **Authorization.** The CPCA Manager may authorize Offerors to submit Facsimile Offers. If Bid or Proposal security is or will be required, Facsimile Offers shall not be authorized unless a method has been established for receipt of such security. Prior to authorizing the submission of Facsimile Offers, the CPCA Manager shall determine that equipment and personnel are available which are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the CPCA Manager shall establish administrative procedures and controls:

(a) To receive, identify, record and safeguard Facsimile Offers;

(b) To ensure timely delivery of Offers to the location of Opening; and

(c) To preserve the Offers as sealed.

(2) Provisions to be Included in Solicitation Document. In addition to all other requirements, if Facsimile Offer for Bids or Proposals are authorized, the following provisions shall be included in the Solicitation Document:

(a) A provision substantially in the form of the following: "A 'Facsimile Offer', as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the County via a facsimile machine.";

(b) A provision substantially in the form of the following: "Offerors may submit Facsimile Offers in response to this Solicitation Document. The entire response shall arrive at the place and by the time specified in this Solicitation Document.";

(c) A provision that requires Offerors to Sign their Facsimile Offers;

(d) A provision substantially in the form of the following: "The County reserves the right to Award the Contract solely on the basis of the Facsimile Offer. However, upon the County's request the apparent successful Offeror shall promptly submit its complete original Signed Offer";

(e) The data and compatibility characteristics of the County's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and

(f) A provision that the County is not responsible for any failure attributable to the transmission or receipt of the Facsimile Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365

49-0320 Pre-Closing Modification or Withdrawal of Offers

(1) **Modifications.** An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer in accordance with Rule 49-0280, unless otherwise specified in the Solicitation Document. Any modification shall include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(2) **Withdrawals.**

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the CPCA Manager prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in Person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority.

(b) The CPCA Manager may release an unopened Offer withdrawn under subsection 2(a) to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(3) Documentation. The CPCA Manager shall include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement File.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.360, ORS 279C.365, ORS 279C.375 & ORS 279C.395

49-0330 Receipt, Opening and Recording of Offers; Confidentiality of Offers

(1) Receipt. CPCA shall mechanically time-stamp or hand-mark each Offer and any modification upon receipt. CPCA shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If CPCA for any reason opens an Offer or a modification prior to the Opening, CPCA shall return the Offer or modification to its secure and confidential state until Opening and shall document the resealing for the Procurement File (e.g., "CPCA opened the Offer due to improper identification of the Offer").

(2) Opening and Recording. CPCA shall publicly open Offers including any modifications made to the Offer pursuant to Rule 49-0320. In the case of Invitations to Bid, to the extent practicable, CPCA shall read aloud the name of each Bidder, the Bid price(s), and such other information as CPCA considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, CPCA will not read Offers aloud.

(3) Availability. After Opening, CPCA shall make Bids available for public inspection, but Proposals shall not be required to be available for public inspection until after notice of intent to Award is issued. In any event CPCA may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); ORS 646.461 to 646.475. To the extent such designation is not in accordance with applicable law, those portions shall be made available for public inspection. The Offeror shall separate information designated as confidential from other non-confidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, ORS 279C.375 & ORS 279C.395

49-0340 Late Bids, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. CPCA shall not consider late Offers, withdrawals or modifications except as permitted in Rule 49-0350.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, ORS 279C.375 & ORS 279C.395

49-0350 Mistakes

(1) **Generally.** To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, CPCA should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) **Treatment of Mistakes.** CPCA shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If CPCA discovers certain mistakes in an Offer after Opening, but before Award of the Contract, CPCA may take the following action:

(a) Waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) Correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit prices.

(c) Permit an Offeror to withdraw an Offer based on one (1) or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if permission to withdraw the Offer is not granted;

(G) That the County's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the County or the public; and

(H) That the Offeror promptly gave notice of the claimed error to the County.

(d) The criteria in subsection (2)(c) of this Rule shall determine whether the County will permit an Offeror to withdraw its Offer after Closing. These criterion also shall apply to the question of whether the County will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the County based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the County, whether by Award to the next lowest Responsive and Responsible Bidder or the next best Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) **Rejection for Mistakes.** CPCA shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) **Identification of Mistakes after Award.** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 49 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375 & ORS 279C.395

49-0360 First-Tier Subcontractors; Disclosure and Substitution

(1) **Required Disclosure.** Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the Department to exceed $100,000, all Bidders shall submit to the Department a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those Entities that would be contracting directly with the prime Contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:

(a) Five percent of the total Contract Price, but at least $15,000; or

(b) $350,000, regardless of the percentage of the total Contract Price.

(2) **Bid Closing, Disclosure Deadline and Bid Opening.** For each ITB to which this Rule applies, the CPCA Manager shall:

(a) Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., and provided that the two-hour disclosure deadline described by this Rule would not then fall on a legal holiday;

(b) Open Bids publicly immediately after the Bid Closing; and

(c) Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed in the Solicitation Document.

(3) **Bidder Instructions and Disclosure Form.** For the purposes of this Rule, the Solicitation shall:

(a) Prescribe the disclosure form that shall be utilized, substantially in the form set forth in ORS 279C.370(2); and

(b) Provide instructions in a notice substantially similar to the following:

"Instructions for First-Tier Subcontractor Disclosure"

Bidders are required to disclose information about certain first-tier subcontractors when the Contract value for a Public Improvement is greater than $100,000 (see ORS 279C.370). Specifically, when the Contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5% of the project Bid, but at least $15,000, or (ii) $350,000 regardless of the percentage, the Bidder shall disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:

1. The subcontractor's name,
2. The category of Work that the subcontractor would be performing, and
3. The dollar value of the subcontract.

(c) If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the disclosure form.

THE COUNTY SHALL REJECT A BID AS NONRESPONSIVE IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see PCRB Rule 49-0360).

(4) **Submission.** A Bidder shall submit the disclosure form required by this Rule either in its Bid submission, or within two working hours after Bid Closing in the manner specified by the ITB.

(5) **Responsiveness.** Compliance with the disclosure and submittal requirements of this Rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract Award.

(6) **CPCA Role.** CPCA shall obtain, and make available for public inspection, the disclosure forms required by this Rule. The Department shall provide copies of disclosure forms to the Bureau of Labor and Industries. Neither the CPCA Manager nor the Department is required to determine the accuracy or completeness of the information provided on disclosure forms.

(7) **Substitution.** Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585, the Solicitation Document and the Contract. Departments shall accept written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585 and provisions of the Solicitation Document and Contract, the County does not have a statutory role or duty to review, approve or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.370, ORS 279C.585, ORS 279C.590 & ORS 279C.835

49-0370 Disqualification of Persons

(1) Authority. The CPCA Manager may disqualify a Person from consideration of Award of the County's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with these Rules.

(2) Standards for Disqualification. The CPCA Manager may disqualify a Person for:

(a) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(b) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Person's responsibility as a Contractor.

(c) Conviction under state or federal antitrust statutes.

(d) Violation of a contract provision that is regarded by the County to be so serious as to justify Conduct Disqualification. A violation under this subsection (2)(d) may include but is not limited to material failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.

(e) The Person does not carry workers' compensation or unemployment insurance as required by statute.

(f) Violation of ORS 279A.110(1).

(3) Notice of Intent to Disqualify. The CPCA Manager shall notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:

(a) State that the County intends to disqualify the Person;

(b) Set forth the reasons for the Disqualification;

(c) Include a statement that the Person shall have a right to appeal the notice of intent to disqualify and have a hearing in accordance with Rule 49-0455 and a statement of the time within which an appeal shall be filed.

(d) Include a reference to the particular sections of the statutes and rules involved;

(e) State the proposed Disqualification period; and

(f) State that the Person may be represented by legal counsel at the hearing.

(4) Hearing. The CPCA Manager shall schedule a hearing upon receipt of the Person's timely request. The CPCA Manager shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.

(5) Notice of Disqualification. The CPCA Manager will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:

(a) The effective date and period of Disqualification;

(b) The grounds for Disqualification; and

(c) A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification, the Disqualified Person shall notify the CPCA Manager in Writing within three (3) Days after receipt of the notice of Disqualification if the Person intends to appeal the decision.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 200.065, ORS 200.075, ORS 279C.440, ORS 279C.445, ORS 279C.450 & ORS 279A.110

49-0380 Bid or Proposal Evaluation Criteria

(1) **General.** A Public Improvement Contract, if Awarded, shall be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. See Rule 49-0390 and Rules 49-0600 to 49-0690.

(2) **Bid Evaluation Criteria.** Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.

(a) **Lump Sum.** If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the County elects not to Award additive or deductive alternates, Bids shall be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price shall be calculated by adding to or deducting from the base Bid those alternates selected by the Department, for the purpose of comparing Bids.

(b) **Unit Price.** If the Bid includes unit pricing for estimated quantities, the total Bid price shall be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the Department, for the purpose of comparing Bids. The estimated quantity of the Procurement to be used for determination of the low Bidder shall be specified in the Solicitation Document. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price shall govern. See Rule 49-0350(2)(b).

(3) **Proposal Evaluation Criteria.** If the Board has exempted the Procurement of a Public Improvement from the Competitive Bidding requirements of ORS 279C.335(1), and has directed that an Alternative Contracting Method under ORS 279C.335(3) be used, the evaluation criteria shall be set forth in the Solicitation Documents. See, Rule 49-0650, ORS 279C.335 and 279C.405.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335

49-0390 Offer Evaluation and Award; Determination of Responsibility

(1) **General.** If Awarded, the CPCA Manager shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract or is ineligible for Award as a nonresident education service district (ORS 279C.325). The CPCA Manager may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest. Where Award is based on competitive Bids, multiple contract awards may be made when specified in the ITB.

(2) **Determination of Responsibility.** Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the CPCA Manager shall have information that indicates that the Offeror meets the standards of responsibility. To be a Responsible Offeror, the CPCA Manager shall determine that the Offeror:

(a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(b) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. An Offeror's record of contract performance should be carefully scrutinized if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the CPCA Manager should determine whether the Offeror's deficient performance was expressly excused under the terms of contract, or whether the Offeror took appropriate corrective action. The CPCA Manager may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The CPCA Manager shall make its basis for determining an Offeror not Responsible under this paragraph part of the Procurement File;

(c) Has a satisfactory record of integrity. An Offeror may lack integrity if the CPCA Manager determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Department. The CPCA Manager may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under Rule 49-0370 may be used to determine an Offeror's integrity. An Offeror may be found to be nonresponsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The CPCA Manager shall make the basis for determining that an Offeror is not Responsible under this paragraph part of the Procurement File;

(d) Is legally qualified to contract with the County; and

(e) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the

County concerning responsibility, the CPCA Manager shall base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

(3) Documenting Determination of Responsibility. CPCA shall document compliance with ORS 279C.375 (3) and the above sections of this rule on a Responsibility Determination Form substantially as set forth in ORS 279.375(3)(c), and file that form with the Construction Contractors Board within 30 days after Contract Award.

(4) Evaluation. The Department shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Department shall not evaluate an Offer using any other requirement or criterion.

(5) Offeror Submissions.

(a) The Department may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material and may also require any of the following prior to Award:

(A) Demonstration, inspection or testing of a product prior to Award for characteristics such as compatibility, quality or workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The Department shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The CPCA Manager shall reject an Offer providing any product that does not meet the Solicitation Document requirements. Rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(6) Evaluation of Bids. The Department shall use only objective criteria to evaluate Bids as set forth in the ITB. The Department shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

(a) **Nonresident Bidders.** In determining the lowest Responsive Bid, the CPCA Manager shall, in accordance with Rule 46-0310, add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.

(b) **Clarifications.** In evaluating Bids, a Department may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder shall submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.

(7) Evaluation of Proposals. See Rule 49-0650 regarding Rules applicable to Requests for Proposals.

Stat. Auth.: ORS 279A.065, Oregon Laws 2005, chapter 413
Stats. Implemented: ORS 279C.325, ORS 279C.335, ORS 279C.365, ORS 279C.375 & ORS 279C.395

49-0395 Notice of Intent to Award

(1) **Notice.** At least seven (7) Days before the Award of a Public Improvement Contract, CPCA shall issue to each Offeror or post electronically or otherwise a notice of the County's intent to Award the Contract. This requirement does not apply to informal competitive quotes or emergency Public Improvement Contracts.

(2) **Finalizing Award.** The Award shall not be final until the later of the following: Seven (7) Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or a after providing a Written response to all timely-filed protests that denies the protest and affirms the Award.

(3) **Prior Notice Impractical.** Posting of notice of intent to Award shall not be required when the CPCA Manager determines that it is impractical due to unusual time constraints in making prompt Award for the immediate procurement needs, documents the Procurement File as to the reasons for that determination, and posts notice of that action as soon as reasonably practical.

Stat. Auth.: ORS 279A.065
Stat. Implemented: ORS 279C.375

49-0400 Documentation of Award; Availability of Award Decisions

(1) **Basis of Award.** After Award, the CPCA Manager shall make a record showing the basis for determining the successful Offeror part of the Procurement File.

(2) **Contents of Award Record for Bids.** The record shall include:

(a) All submitted Bids;

(b) Completed Bid tabulation sheet; and

(c) Written justification for any rejection of lower Bids.

(3) **Contents of Award Record for Proposals.** Where the use of Requests for Proposals is authorized as set forth in Rule 49-0650, the record shall include:

(a) All submitted Proposals;

(b) The completed evaluation of the Proposals;

(c) Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and

(d) If the Solicitation Document permitted Negotiations in accordance with

(e) Rule 49-0650, the Department's completed evaluation of the initial Proposals and the Department's completed evaluation of final Proposals.

(4) **Contract Document.** The Department shall deliver a fully executed copy of the final Contract to the successful Offeror.

(5) **Bid Tabulations and Award Summaries.** Upon request of any Person CPCA shall provide Bid tabulations or evaluation summaries of Proposals for a nominal charge to be determined by the CPCA Manager. Requests shall contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. CPCA may also provide tabulations of Bids and Proposals Awarded on the CPCA Website.

(6) **Availability of Procurement Files.** CPCA shall make completed Procurement Files available for public review at the CPCA office.

(7) **Copies from Procurement Files.** Any Person may obtain copies of material from Procurement Files upon payment of a reasonable charge.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365 & ORS 279C.375

49-0410 Time for Department Acceptance; Extension

(1) **Time for Offer Acceptance.** An Offeror's Bid, or Proposal submitted as a Firm Offer, is irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document.

(2) **Extension of Acceptance Time.** CPCA may request, orally or in writing, that Offerors extend, in writing, the time during which the County may consider and accept their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375

49-0420 Negotiation With Bidders Prohibited

(1) **Bids.** Except as permitted by Rule 49-0430, a Department shall not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the Department and Contractor may modify the resulting Contract only by change order or amendment to the Contract in accordance with Rule 49-0910.

(2) **Requests for Proposals.** A Department may conduct Discussions or Negotiations with Proposers only in accordance with the requirements of Rule 49-0650.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.340 & ORS 279C.375

49-0430 Negotiation When Bids Exceed Cost Estimate

(1) **Generally.** If all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the Department's Cost Estimate, prior to Contract Award the Department may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the Department's Cost Estimate. The subcontractor disclosure and substitution requirements of Rule 49-0360 do not apply to Negotiations under this Rule.

(2) **Definitions.** The following definitions apply to this Rule:

(a) **Cost Estimate.** The Department's most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation Worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) **Other Options**. Those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in Rule 49-0650, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.

(c) **Project.** A Public Improvement.

(d) **Value Engineering.** The identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

(3) Rejection of Bids. In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the County, shall be excluded from consideration.

(4) Scope of Negotiations. The CPCA Manager shall not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the Department to participate in the Bidding process had the change been made during the Solicitation process rather than during negotiation. This Rule shall not be construed to prohibit resolicitation of trade subcontracts.

(5) Discontinuing Negotiations. The Department may discontinue Negotiations at any time, and shall do so if it appears to the Department that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain subcontractor pricing information upon request, shall be considered a lack of good faith.

(6) Limitation. Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder.

(7) Public Records. To the extent that a Bidder's records used in Contract Negotiations are public records, they are exempt from disclosure until after the negotiated Contract has been awarded or the negotiation process has been terminated, at which time they are subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 279C.340 & ORS 279A.065
Stats. Implemented: ORS 279C.340

49-0440 Rejection of Offers

(1) Rejection of an Offer.

(a) The CPCA Manager shall reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement process or that rejecting the Offer is in the public interest.

(b) The CPCA Manager shall reject an Offer upon a finding that the Offer:

(A) Is contingent upon acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications);

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;

(D) Offers Work that fails to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Documents;

(G) Is not in substantial compliance with all prescribed public Solicitation procedures.

(c) The CPCA Manager shall reject an Offer upon a finding that the Offeror:

(A) Has not been prequalified and the Solicitation Document required mandatory prequalification;

(B) Has been Disqualified;

(C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;

(D) Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement;

(E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;

(F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(G) Has failed to provide the certification required under subsection (3) of this Rule;

(H) Is not responsible. See Rule 49-0390(2) regarding determination that the Offeror has met statutory standards of responsibility.

(2) **Form of Business.** For purposes of this Rule, CPCA may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this Rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and Rule 49-0370.

(3) **Certification of Non-Discrimination.** An Offeror shall certify and deliver to the CPCA Manager Written certification, as part of the Offer that the Offeror has not discriminated and will not discriminate against minority, women or emerging business enterprises in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

(4) **Rejection of all Offers.** The CPCA Manager may reject all Offers for good cause upon a written finding it is in the public interest to do so. If CPCA determines it is in the public interest to reject all offers written notice shall be given to all Offerors.

(5) **Criteria for Rejection of All Offers.** The CPCA Manager may reject all Offers upon a Written finding that:

(a) The content of or an error in the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive Procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct and inadvertent or intentional errors in the Solicitation Document;

(e) CPCA cancels the Solicitation in accordance with Rule 49-0270; or

(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375, ORS 279C.380, ORS 279C.395, ORS 279A.105 & ORS 279A.110

49-0450 Protest of Contractor Selection, Contract Award

(1) **Purpose.** An adversely affected or aggrieved Offeror shall exhaust all avenues of administrative review and relief before seeking judicial review of the Contractor selection or Contract Award decision.

(2) **Notice of Competitive Range.** Unless otherwise provided in the RFP, when the competitive Proposal process is authorized under Rule 49-0650, the CPCA Manager shall provide Written notice to all Proposers of the determination of the Proposers included in the Competitive Range. The notice of the Proposers included in the Competitive Range shall not be final until the later of the following:

(a) 10 Days after the date of the notice, unless otherwise provided therein; or

(b) Until the CPCA Manager provides a Written response to all timely-filed protests that denies the protest and affirms the notice of the Proposers included in the Competitive Range.

(3) **Notice of Intent to Award.** The CPCA Manager shall provide Written notice to all Offerors of the intent to Award the Contract as provided in Rule 49-0395.

(4) **Right to Protest Award.**

(a) An adversely affected or aggrieved Offeror may submit to the CPCA Manager a Written protest of the intent to Award within seven (7) Days after issuance of the notice of

intent to Award the Contract, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest shall be in Writing and shall specify the grounds upon which the protest is based.

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Offeror shall claim that all lower Bidders or higher-scored Proposers are ineligible for Award:

(A) Because their Offers were nonresponsive; or

(B) In making the Award, there was a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

(d) The CPCA Manager shall not consider a protest submitted after the time period established in this Rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest a decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(5) Right to Protest Competitive Range.

(a) An adversely affected or aggrieved Proposer may submit to the CPCA Manager a Written protest of the decision to exclude the Proposer from the Competitive Range within seven (7) Days after issuance of the notice of the Competitive Range, unless a different protest period is provided under the Solicitation Document. (See procedural requirements for the use of RFPs at Rule 49-0650.)

(b) The Proposer's protest shall be in Writing and shall specify the grounds upon which the protest is based.

(c) A Proposer is adversely affected only if the Proposer is responsible and submitted a Responsive Proposal and is eligible for inclusion in the Competitive Range, i.e., the protesting Proposer shall claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the Competitive Range because:

(A) Their Proposals were not responsive; or

(B) In excluding the Proposer from the Competitive Range, there was a substantial violation of a provision of the RFP, the Public Contracting Code or these Rules, and would have, but for such substantial violation, been included in the Competitive Range.

(d) The CPCA Manager shall not consider a protest submitted after the time period established in this Rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest a decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(6) Authority to Resolve Protests. The CPCA Manager may settle or resolve a written protest submitted in accordance with the requirements of this Rule.

(7) **Decision.** If a protest is not settled or resolved, the CPCA Manager shall promptly issue a written decision on the protest.

(8) **Award.** The successful Offeror shall promptly execute the Contract after the Award is final. The County shall execute the Contract only after all required documents and approvals have been obtained.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375, ORS 279C.380, ORS 279C.385 & ORS 279C.460

49-0460 Performance and Payment Security; Waiver

(1) **Public Improvement Contracts.** Unless the required performance bond and payment bond are waived under subsection (5) of this rule, excused in cases of Emergency under Rule 49-0150 (2), or unless the Board exempts a Contract or classes of contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor shall execute and deliver to the Department a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. The requirement for the BOLI Public Works payment bond under ORS 279C.830 may only be waived as provided in ORS 279C.836 (4), (7) and (8).

(2) **Other Construction Contracts.** A Department may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements shall be expressly set forth in the Solicitation Document.

(3) **Requirement for Surety Bond.** If a performance bond is required, the Department shall accept only a performance bond furnished by a surety company authorized to do business in Oregon. The Department may accept a cashier's check or certified check in lieu of all or a portion of the required performance bond if specified in the Solicitation Document. The payment bond shall be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full Contract Price.

(4) **Time for Submission.** The apparent successful Offeror shall promptly furnish the required performance and payment security upon the Department's request. If the Offeror fails to furnish the all security bonds as requested, the County may reject the Offer and Award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the County's discretion, the Offeror shall forfeit its Bid or Proposal security.

(5) **Public Improvement Contracts $75,000 or Less.** Departments may waive Bid or Proposal security and performance bond and payment bond requirements if the amount of the Contract for the Public Improvement is $75,000 or less or in the case of highways, bridges or other transportation projects, $50,000 or less.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375, ORS 279C.380 & ORS 279C.390

49-0470 Substitute Contractor

If the Contractor provided a performance bond, the Department may afford the Contractor's surety the opportunity to provide a substitute contractor to complete performance of the Contract. A substitute contractor shall perform all remaining Contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and shall not be subject to the competitive Procurement provisions of ORS Chapter 279C.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, ORS 279C.370, ORS 279C.375, ORS 279C.380 & 279C.390

49-0490 Foreign Contractor

If the Contract Price exceeds $10,000 and the Contractor is a Foreign Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to the County. The Department shall satisfy itself that the above requirements have been complied with before it authorizes issuance of final payment on the Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.120

DIVISION 49 ALTERNATIVE CONTRACTING METHODS

49-0600 Purpose

Rules 49-0600 to 49-0690 are intended to provide guidance regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by the Board under ORS 279C.335. Those methods include, but are not limited to, Design-Build, Energy Savings Performance Contract (ESPC) and Construction Manager/General Contractor (CM/GC) forms of contracting. As to ESPC contracting, Rules 49-0600 to 49-0690 implement the requirements of ORS 279C.335 pertaining to the adoption of Rules governing the procedures for entering into ESPCs.

Stat. Auth.: ORS 279C.335, 279A.065 & 351.086
Stats. Implemented: ORS 279C.335, 279A.065 &351.086

49-0610 Definitions for Alternative Contracting Methods

The following definitions shall apply to Rules 49-0600 to 49-0690, unless the context requires otherwise:

(1) Alternative Contracting Methods means innovative Procurement techniques for obtaining Public Improvement Contracts, utilizing processes other than the traditional method of Design-Bid-Build (with Award based solely on price, in which a final design is issued with formal Bid documents, construction Work is obtained by sealed Bid Awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting, CM/GC forms of contracting and ESPCs, which are specifically addressed in Rules 49-0600 to 49-0690, as well as other developing techniques such as general "performance contracting" and "cost plus time" contracting, for which procedural requirements are identified under Rules 49-0600 to 49-0690.

(2) Construction Manager/General Contractor (or "CM/GC") means a form of Procurement that results in a Public Improvement Contract for a Construction Manager/General Contractor to undertake project team involvement with design development; constructability reviews; value engineering, scheduling, estimating and subcontracting services; establish a Guaranteed Maximum Price to complete the Contract Work; act as General Contractor; hold all subcontracts, self-perform portions of the Work as may be allowed by the County under the CM/GC Contract; coordinate and manage the building process; provide general Contractor expertise; and act as a member of the project team along with the Department, architects, engineers and other consultants. CM/GC also refers to a Contractor under this form of Contract, sometimes known as the "Construction Manager at Risk."

(3) Design-Build means a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the Department, and manages both design and construction. In this form of Contract, a single Person provides the Department with all of the services necessary to both design and construct the project.

(4) Energy Conservation Measures (or "ECMs") (also known as "energy efficiency measures") means, as used in ESPC Procurement, any equipment, fixture or furnishing to be added to or used in an existing building or structure, and any repair, alteration or improvement to an existing building or structure that is designed to reduce energy consumption and related costs, including those costs related to electrical energy, thermal energy, water consumption, waste disposal, and future contract-labor costs and materials costs associated with maintenance of the building or structure. For purposes of these Rules 49-0600 to 49-0690, use of either or both of the terms "building" or "structure" shall be deemed to include existing energy, water and waste disposal systems connected or related to or otherwise used for the building or structure when such system(s) are included in the project, either as part of the project together with the building or structure, or when such system(s) are the focus of the project. Maintenance services are not Energy Conservation Measures, for purposes of Rules 49-0600 to 49-0690.

(5) Energy Savings Guarantee means the energy savings and performance guarantee provided by the ESCO under an ESPC Procurement, which guarantees to the County that certain energy savings and performance will be achieved for the project covered by the RFP, through the installation and implementation of the agreed-upon ECMs for the project. The Energy Savings Guarantee shall include, but shall not be limited to, the specific energy savings and performance levels and amounts that will be guaranteed, provisions related to the financial remedies available to the County in the event the guaranteed savings and performance are not achieved, the specific conditions under which the ESCO will guarantee energy savings and performance (including the specific responsibilities of the County after final completion of the design and construction phase), and the term of the energy savings and performance guarantee.

(6) Energy Savings Performance Contract (or "ESPC") means a Public Improvement Contract between the County and a Qualified Energy Service Company for the identification, evaluation, recommendation, design and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.

(7) Guaranteed Maximum Price (or "GMP") means the total maximum price provided to the County by the Contractor, and accepted by the County, that includes all reimbursable costs of and fees for completion of the Contract Work, as defined by the Public Improvement Contract, except for material changes in the scope of Work. It may also include particularly identified contingency amounts.

(8) Measurement and Verification (or "M & V") means, as used in ESPC Procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol ("IPMVP"), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.

(9) Project Development Plan means a secondary phase of Personal Services and Work performed by an ESCO in an ESPC Procurement when the ESCO performs more extensive design of the agreed-upon ECMs for the project, provides the detailed provisions of the ESCO's Energy Savings Guarantee that the fully installed and commissioned ECMs will achieve a particular energy savings level for the building or structure, and prepares an overall report or plan summarizing the ESCO's Work during this secondary phase of the Work and otherwise explaining how the agreed-upon ECMs will be implemented during the design and construction phase of the Work; The term "Project Development Plan" can also refer to the report or plan provided by the ESCO at the conclusion of this phase of the Work.

(10) Qualified Energy Service Company (or "ESCO") means, as used in ESPC Procurement, a company, firm or other legal Person with the following characteristics: demonstrated technical, operational, financial and managerial capabilities to design, install, construct, commission, manage, measure and verify, and otherwise implement Energy Conservation Measures and other Work on building systems or building components that are directly related to the ECMs in existing buildings and structures; a prior record of successfully performing ESPCs on projects involving existing buildings and structures that are comparable to the project under consideration by the Department; and the financial strength to effectively guarantee energy savings and performance under the ESPC for the project in question, or the ability to secure necessary financial measures to effectively guarantee energy savings under an ESPC for that project.

(11) Technical Energy Audit means, as used in ESPC Procurement, the initial phase of Personal Services to be performed by an ESCO that includes a detailed evaluation of an existing building or structure, an evaluation of the potential ECMs that could be effectively utilized at the facility, and preparation of a report to the Department of the ESCO's findings during this initial phase of the Work; the term "Technical Energy Audit" can also refer to the report provided by the ESCO at the conclusion of this phase of the Work.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335 & ORS 279A.065

49-0620 Use of Alternative Contracting Methods

(1) **Competitive Bidding Exemptions.** ORS Chapter 279C requires a Competitive Bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted or an individual Contract has been exempted in accordance with ORS 279C.335 and any applicable PCRB Rules. Use of Alternative Contracting Methods may be directed by the Board as an exception to the prescribed public contracting practices in Oregon, and their use shall be justified in accordance with the Code and Rules 49-0600 to 49-0690. See Rule 49-0630 regarding required findings and restrictions on class Exemptions.

(2) **Energy Savings Performance Contracts.** Unlike other Alternative Contracting Methods covered by Rules 49-0600 to 49-0690, ESPCs are exempt from the Competitive Bidding process for Public Improvement Contracts pursuant to ORS 279C.335(1)(f), upon compliance with the procedures set forth in Rule 49-0600 to 49-0690 related to the Solicitation, negotiation and contracting for ESPC Work. If those procedures are not followed, an ESPC procurement may still be exempted from competitive Bidding requirements by following the exemption requirements in Rules 49-0620 (1) and 49-0630.

(3) **Post-Project Evaluation.** ORS 279C.355 requires that the County prepare a formal post-project evaluation of Public Improvement projects in excess of $100,000 for which the Competitive Bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the County's best interest to use an Alternative Contracting Method. For each such project, the Department shall prepare and deliver the evaluation required by ORS 279C.335 to the Board within 30 Days of the date the Department "accepts" the Public Improvement project, as defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the Work. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

(a) Financial information, consisting of cost estimates, any Guaranteed Maximum Price, changes and actual costs;

(b) A narrative description of successes and failures during design, engineering and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the Exemption findings.

Stat. Auth.: ORS 279C.335 & 279A.065
Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.355 & ORS 351.086

49-0630 Findings, Notice and Hearing

(1) **Cost Savings Factors.** When findings are required under ORS 279C.335 to exempt a Contract or class of Contracts from Competitive Bidding requirements, the "substantial cost savings" criterion at ORS 279C.335(2)(b) allows consideration of the type, cost, amount of the Contract, number of Entities available to Bid, and "such other factors as may be deemed appropriate", and, if the Public Improvement relates to the operation, maintenance or construction of highways, bridges and other transportation facilities, that the exemption will result in substantial cost savings to the County or to the public.

(2) **Required Information.** Likewise, the statutory definition of "findings" at ORS 279C.330 means the justification for a Board conclusion that includes, "but is not limited to," information regarding eight identified areas: Operational, budget and financial data, public benefits, value engineering, specialized expertise required, public safety, market conditions, technical complexity, and funding sources.

(3) **Addressing Cost Savings.** Accordingly, when the Contract or class of Contracts under consideration for an Exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings" requirement may be addressed by a combination of:

(a) Specified findings that address the factors and other information specifically identified by statute, including an analysis or reasonable forecast of future cost savings as well as present cost savings; and

(b) Additional findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such findings shall relate back to the specific characteristics of the project or projects at issue in the Exemption request.

(c) As an alternative to the "substantial cost savings" requirement where an Alternative Contracting Method has not been previously used, the County may make a Finding that identifies the project as a "pilot project" under ORS 279C.335(2)(c).

(4) **Favoritism and Competition.** The criteria at ORS 279C.335(2)(a) that it is "unlikely" that the Exemption will "encourage favoritism" or "substantially diminish competition" may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method, competition will be encouraged, Award made based upon identified selection criteria and an opportunity to protest the Award.

(5) **Description.** Findings supporting a competitive bidding exemption shall describe with specificity the Alternative contracting Method to be used in lieu of competitive bidding, including, but not limited to, whether a one step (Request for Proposals) or two step (beginning with Requests for Qualifications) solicitation process will be utilized. The Findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. However, such description in the findings shall not be binding upon the County. The parameters of the Public Improvement Contract shall be those set forth in the Solicitation Document.

(6) **Class Exemptions.** In making the findings supporting a class Exemption the Department shall clearly identify defining characteristics of the class. Those characteristics shall include some combination of Project descriptions or locations, time periods, contract values or method of Procurement or other factors that distinguish the limited and related class of Projects from the Department's overall construction program. Classes shall not be defined solely by funding sources, such as a particular bond fund, or by method of Procurement, but shall be defined by characteristics that reasonably relate to the Exemption criteria set forth in ORS 279C.335(2).

(7) **Public Hearing.** Before final adoption of findings exempting a Public Improvement Contract or class of Contracts from the requirement of Competitive Bidding, notice shall be given and a public hearing held by the Board as follows:

(a) Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of fourteen (14) Days before the hearing.

(b) The notice shall state that the public hearing is for the purpose of taking comments on the County's draft findings for an Exemption from the Competitive Bidding requirement. The notice shall state that at the hearing, after an opportunity for receipt of comments, the Board will consider adoption of the draft findings and approval of the proposed alternative contracting method. At the time of the notice, copies of the draft findings shall be made available to the public.

(c) At the public hearing, the Board shall offer an opportunity for any interested party to appear and present comment before considering and adopting the findings.

(d) If the County is required to act promptly due to circumstances beyond the County's control that do not constitute an Emergency, notification of the public hearing may be published simultaneously with the County's Solicitation of contractors for the alternative public contracting method, as long as responses to the Solicitation are due at least five (5) Days after the hearing and approval of the findings.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335 & ORS 279A.065

49-0640 Competitive Proposals; Procedure

Departments may utilize the following RFP process for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and Contract negotiation, only in accordance with ORS Rules 49-0600 to 49-0690, unless other applicable statutes control the use of competitive Proposals for Public Improvement Contracts. Also see the subdivision of Rules in this division entitled Formal Procurement Rules, Rules 49-0200 to 49-0480, and RFP related Rules under the Alternative Contracting Methods subdivision at Rules 49-0640 to 49-0660. For ESPCs, the following RFP process shall be utilized if a Department desires the Procurement process to be exempt from the Competitive Bidding requirements of ORS 279C.335. The RFP process for the Alternative Contracting Methods identified in Rules 49-0600 to 49-0690 includes the following steps:

(1) Proposal Evaluation. Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. For ESPC Proposal evaluations, the RFP may provide that qualifications-based evaluation factors will outweigh consideration of price-related factors, due to the fact that prices for the major components of the Work to be performed during the ESPC process contemplated by the RFP will likely not be determinable at the time of Proposal evaluation. Proposal evaluation shall be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:

(a) Be reasonable estimates based on information available to the Department;

(b) Treat all Proposals equitably; and

(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the County. See ORS 279C.305.

(2) **Evaluation Factors.**

(a) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that affect cost or quality.

(b) In CM/GC contracting, in addition to (a) above, those factors may also include the ability to respond to the technical complexity or unique character of the project, analyze and propose solutions or approaches to complex project problems, coordination of multiple disciplines, the time required to commence and complete the improvement, and related matters that affect cost or quality.

(c) In Design-Build contracting, in addition to (a) and (b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that affect cost or quality.

(d) In ESPC contracting, in addition to the factors set forth in subsections (a), (b) and (c) above, those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint venturers comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee Contract levels, the specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the project, information on the specific methods, techniques and equipment that the ESCO will use in the performance of the Work under the ESPC, the ESCO's team members and consultants to be assigned to the project, the ESCO's experience in the Energy Savings Performance Contracting field, the ESCO's experience acting as the prime contractor on previous ESPC projects (as opposed to a sub-contractor or consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience

(independently or in cooperation with an independent third-party M & V consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular project between the County and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the Work and the ESCO's fee structure for all phases of the ESPC.

(3) **Contract Negotiations.** Contract terms may be negotiated to the extent allowed by the RFP and Rules 49-0600 to 49-0690, provided that the general Work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See Rule 49-0650. Terms that may be negotiated consist of details of Contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality. In ESPC contracting, terms that may be negotiated also include the scope of preliminary design of ECMs to be evaluated by the parties during the Technical Energy Audit phase of the Work, the scope of services to be performed by the ESCO during the Project Development Plan phase of the Work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO and scope of Work, methodologies and compensation terms and conditions during the design and construction phase and M & V phase of the Work, consistent with the requirements of Rule 49-0680 below.

Stat. Auth.: ORS 279C.335 & ORS 279A.065
Stats. Implemented: ORS 279C.335, ORS 279A.065 & ORS 351.086

49-0645 Requests for Qualifications (RFQ)

Generally. The County may utilize Requests for Qualifications (RFQs) to obtain information useful in the preparation or distribution of a Request for Proposals (RFPs). When using RFQs as the first step in a two step solicitation process, in which distribution of the RFPs will be limited to the firms qualified under the RFQ process. The County shall first advertise and provide notice of the RFQ in the same manner as required in Rule 49-0210. The RFQ shall provide that RFPs will be distributed only to the firms selected in the RFQ process. The RFQ shall also provide for a protest provision substantially the same as that described in Rule 49-0450 (5) regarding protest of the competitive range. After the RFQ process is completed the County may distribute the RFP to the selected firms without further advertisement of the solicitation.

49-0650 Requests for Proposals (RFP)

(1) Generally. When authorized or required by an Exemption granted under Rules 49-0620 and 49-0630, the County may Award a Public Improvement Contract by competitive Proposals. A contract awarded under this section may be amended only in accordance with Rule 49-0910. CPCA may issue a request for information, a request for interest, a request for qualifications or other preliminary documents to obtain information useful in the preparation or distribution of a Request for Proposals.

(2) Competitive Proposals shall be subject to the following requirements of Competitive Bidding:

(a) Advertisement under Rule 49-0210;

(b) Requirements for Solicitation Documents under Rule 49-0200;

(c) Disqualification due to a Construction Contractors Board listing under Rule 49-0370;

(d) Contract execution and bonding requirements under Rules 49-0390 and 49-0460;

(e) Determination of responsibility under Rule 49-0390;

(f) Rejection of bids under Rule 49-0440; and

(g) Disqualification and prequalification under Rules 49-0370 and 49-0220.

(3) For the purposes of applying the requirements listed in subsection (2) of this section to competitive Proposals, when used in the sections listed in subsection (2) of this section, "bids" includes Proposals, and "bid documents" and "Invitation to Bid" include requests for Proposals.

(4) Competitive Proposals are not subject to the following requirements of Competitive Bidding:

(a) First-tier subcontractor disclosure under Rule 49-0360; and

(b) Reciprocal preference under Rule 46-0310.

(5) When Award of a Public Improvement Contract advertised by the issuance of a Request for Proposals may be made without negotiation, the Department may require Proposal security that serves the same function with respect to Proposals as bid security serves with respect to bids as follows:

(a) Proposal security may be required in a form and amount as may be determined to be reasonably necessary or prudent to protect the interests of the County.

(b) Proposal security shall be retained if a Proposer who is awarded a Contract fails to promptly and properly execute the Contract and provide any required bonds or insurance.

(c) Proposal security shall be returned to all Proposers upon the execution of the Contract, or earlier in the selection process.

(6) **Receipt of Proposals; evaluation and Award.** Notwithstanding the public records law, ORS 192.410 to 192.505:

(a) Proposals may be opened so as to avoid disclosure of contents to competing Proposers during, when applicable, the process of negotiation.

(b) Proposals are not required to be open for public inspection until after the notice of intent to Award a Contract is issued.

(7) For each Request for Proposals, the Department shall prepare a list of Proposals submitted.

(8) Notwithstanding any requirement to make Proposals open to public inspection after issuance of the notice of intent to Award a Contract, the County may withhold from disclosure to the public trade secrets, as defined in ORS 192.501, and information submitted to a public body in confidence, as described in ORS 192.502, that are contained in a Proposal. If a Request for Proposals is canceled after Proposals are received, the County may return a Proposal to the Proposer that made the Proposal. CPCA shall keep a list of returned Proposals in the file for the solicitation.

(9) The cancellation of requests for Proposals and the rejection of Proposals shall be in accordance with Rule 49-0440.

(10) At least seven (7) Days before the Award of the Contract, unless there is a determination is made that seven (7) Days is impractical, CPCA shall issue to each Proposer or post, electronically or otherwise, a notice of intent to Award.

(11) If a Public Contract is awarded, CPCA shall Award a Public Contract to the Responsible Proposer whose Proposal is determined in Writing to be the most Advantageous to the County based on the evaluation factors set forth in the Request for Proposals and, when applicable, the outcome of any Negotiations authorized by the Request for Proposals. Other factors may not be used in the evaluation.

(12) Solicitation Documents. In addition to the Solicitation Document requirements of Rule 49-0200, this Rule applies to the requirements for Requests for Proposals. RFP Solicitation Documents shall conform to the following standards:

(a) Selection criteria shall be set forth in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions. See Rule 49-0640. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to the Department;

(b) When the Department is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following Discussions, the Department shall identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to negotiation or Discussion and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions the Department has identified as authorized for negotiation. The Department shall describe the evaluation and Discussion or negotiation process, including how the Department will establish the Competitive Range;

(c) When the Department intends to Award Contracts to more than one (1) Proposer, the Department shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The Department shall also include the criteria it will use to determine how the Department will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular Contractor to provide Goods or services from those Contractors Awarded Contracts.

(13) Evaluation of Proposals.

(a) **Evaluation.** Proposals shall be evaluated only in accordance with criteria set forth in the RFP and applicable law to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) Clarifications. In evaluating Proposals, information may be requested from a Proposer to clarify the Proposer's Proposal. A Proposer shall submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.

(B) Limited Negotiation. If the Department did not permit negotiation in its Request for Proposals, the Department may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

(i) Statement of Work; and

(ii) Contract Price as it is affected by negotiating the statement of Work.

(iii) The process for Discussions or Negotiations that is outlined and explained in this Rule does not apply to this limited negotiation.

(b) **Discussions; Negotiations.** If the Department permitted Discussions or Negotiations in the Request for Proposals, the Department shall establish the Competitive Range, and may then conduct Discussions and Negotiations in accordance with this Rule.

(A) If the Solicitation Document provided that Discussions or Negotiations may occur at Department's discretion, the Department may forego Discussions and Negotiations and evaluate all Proposals in accordance with this Rule.

(B) If the Department proceeds with Discussions or Negotiations, the Department shall establish a negotiation team tailored for the acquisition. The Department's team may include legal, technical and negotiating personnel.

(c) **Cancellation.** Nothing in this Rule shall restrict or prohibit the County from canceling the Solicitation at any time.

(14) Competitive Range; Protest; Award.

(a) **Determining Competitive Range.**

(A) After the Opening the Proposals shall be evaluated in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of the Proposals, the Department will determine and rank the Proposers in the Competitive Range.

(B) The Department may increase the number of Proposers in the Competitive Range if the evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the best Proposer after the evaluation of revised Proposals submitted in accordance with the process described in this Rule.

(b) **Protesting Competitive Range.** CPCA shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the evaluation and determination of the Competitive Range in accordance with Rule 49-0450.

(c) **Intent to Award; Discuss or Negotiate.** After the protest period provided in these Rules expires, or after a final response to any protest has been provided, whichever date is later, CPCA may either:

(A) Provide Written notice to all Proposers in the Competitive Range of the County's intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.

(i) An unsuccessful Proposer may protest the notice of intent to Award in accordance with Rule 49-0450.

(ii) After the protest period provided in accordance with Rule 49-0450 expires, or after a final response to any protest has been provided, whichever date is later, the Department shall commence final Contract Negotiations with the highest-ranked Proposer in the Competitive Range; or

(B) Engage in Discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such Discussions and receipt and evaluation of revised Proposals, conduct Negotiations with the Proposers in the Competitive Range.

(15) Discussions; Revised Proposals. If the Department chooses to enter into Discussions with and receive revised Proposals from the Proposers in the Competitive Range, the Department shall proceed as follows:

(a) **Initiating Discussions.** The Department shall initiate oral or Written Discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the Department identified in the RFP as the subject of Discussions. The Department may conduct Discussions for the following purposes:

(A) Informing Proposers of deficiencies in their initial Proposals;

(B) Notifying Proposers of parts of their Proposals for which the Department would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the Department to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) **Conducting Discussions.** The Department may conduct Discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of Discussions with each Proposer. The Department may terminate Discussions with any Proposer in the Competitive Range at any time. However, the Department shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with Department before the Department notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.

(A) In conducting Discussions, the Department:

(i) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(ii) Shall not discuss other Proposers' Proposals;

(iii) Shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal.

(B) At any time during the time allowed for Discussions, the Department may:

(i) Continue Discussions with a particular Proposer;

(ii) Terminate Discussions with a particular Proposer and continue Discussions with other Proposers in the Competitive Range; or

(iii) Conclude Discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.

(c) **Revised Proposals.** At the conclusion of the Department's Discussions with all remaining Proposers in the Competitive Range, the Department shall give all remaining Proposers in the Competitive Range notice of the date, place and time by which they shall submit revised Proposals. This notice shall constitute the Department's termination of Discussions, and Proposers shall submit revised Proposals by the date

and time set forth in the Department's notice without further Discussions with the Department.

(A) Upon receipt of the revised Proposals, the revised Proposals shall be evaluated based upon the evaluation criteria set forth in the Request for Proposals, and ranked based on the scoring.

(B) The Department may conduct Discussions with and accept only one (1) revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.

(d) **Intent to Award; Protest.** CPCA shall provide Written notice to all Proposers in the Competitive Range of the intent to Award the Contract. An unsuccessful Proposer may protest the intent to Award in accordance with Rule 49-0450. After the protest period provided in accordance with that rule expires, or after the final response to any protest has been provided, whichever date is later, the Department shall commence final Contract Negotiations.

(16) Negotiations.

(a) **Initiating Negotiations.** The Department may determine to commence Negotiations with the highest-ranked Proposer in the Competitive Range following the:

(A) Initial determination of the Competitive Range; or

(B) Conclusion of Discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.

(b) **Conducting Negotiations.**

(A) Scope. The Department may negotiate:

(i) The statement of Work;

(ii) The Contract Price as it is affected by negotiating the statement of Work; and

(iii) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals. Accordingly, Proposers shall not submit, and Department shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposals.

(c) **Terminating Negotiations.** At any time during Discussions or Negotiations that the Department conducts in accordance with this Rule, the Department may terminate Discussions or Negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the Department reasonably believes that:

(A) The Proposer is not discussing or negotiating in good faith; or

(B) Further Discussions or Negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(d) **Continuing Negotiations.** If the Department terminates Discussions or Negotiations with a Proposer, the Department may then commence Negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this Rule until the Department has either:

(A) Determined to Award the Contract to the Proposer with whom it is currently discussing or negotiating; or

(B) Completed one (1) round of Discussions or Negotiations with all Proposers in the Competitive Range, unless the Department provided for more than one (1) round of Discussions or Negotiations in the Request for Proposals.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.400 to 279C.410

49-0660 RFP Pricing Mechanisms

(1) A Request for Proposals may result in a lump sum Contract Price, as in the case of Competitive Bidding. Alternatively, a cost reimbursement Contract may be negotiated.

(2) Economic incentives or disincentives may be included to reflect stated Department purposes related to time of completion, safety or other Contracting objectives, including total least cost mechanisms such as life cycle costing.

(3) A Guaranteed Maximum Price (GMP) is used as the pricing mechanism for CM/GC where a total Contract Price is provided in the design phase in order to assist the Department in determining whether the project scope is within the Department's budget, and allowing for design changes during preliminary design rather than after final design Work has been completed.

(a) If this collaborative process is successful, the Contractor shall propose a final GMP, which may be accepted by the Department and included within the Contract.

(b) If this collaborative process is not successful, and no mutually agreeable resolution on GMP can be achieved with the Contractor, then the Department shall terminate the Contract. The Department may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.

(4) When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the Department shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335

49-0670 Design-Build Contracts

(1) **General.** The Design-Build form of contracting, as defined at Rule 49-0610(3), has technical complexities that are not readily apparent. Departments shall use this contracting method only with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to use the Design-Build process, the Department shall be able to reasonably anticipate the following types of benefits:

(a) Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility;

(b) Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;

(c) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;

(d) Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased projects); or

(e) Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.

(2) **Authority.** Departments shall utilize the Design-Build form of contracting only in accordance with the requirements of these Rules 49-0600 to 49-0690. See particularly Rule 49-0620 on "Use of Alternative Contracting Methods" and Rule 49-0680 pertaining to ESPCs.

(3) **Selection.** Design-Build selection criteria may include those factors set forth above in Rule 49-0640(2)(a), (b) and (c).

(4) **Licensing.** If a Design-Build Contractor is not an Oregon licensed design professional, the Department shall require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(2) (g) (A) regarding the Offer of architectural services, and ORS 672.060(11) regarding the Offer of engineering services that are related to construction Work.

(5) **Performance Security.** ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related Personal Services specified in the Contract. This additional obligation, beyond performance of construction Work, extends only to the provision of Personal Services and related design revisions, corrective Work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

(6) **Contract Requirements.** Departments shall conform their Design-Build contracting practices to the following requirements:

(a) **Design Services.** The level or type of design services required shall be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The Personal Services and Work to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements shall be identified.

(b) **Professional Liability.** The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the County, as well as requirements for professional liability insurance.

(c) **Risk Allocation.** The Contract shall clearly identify the extent to which the County requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.

(d) **Warranties.** The Contract shall clearly identify any express warranties made to the County regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.

(e) **Incentives.** The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.

(f) **Honoraria.** If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the Solicitation process on the basis that the Department is benefited from such deliverables.

Stat. Auth.: ORS 279C.335 & ORS 279A.065
Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.110 & ORS 351.086

49-0680 Energy Savings Performance Contracts (ESPC)

(1) Generally. These Rules 49-0600 to 49-0690 include a limited, efficient method for Departments to enter into ESPCs outside the Competitive Bidding requirements of ORS 279C.335 for existing buildings or structures, but not for new construction (See ORS 279C.335 (1) (f)). If a Department chooses not to utilize the ESPC Procurement method provided for by these Rules 49-0600 to 49-0690, the Department may still enter into an ESPC by complying with the Competitive Bidding Exemption process set forth in ORS 279C.335, or by otherwise complying with the Procurement requirements of these Rules.

(2) SPC Contracting Method. The ESPC form of contracting, as defined at Rule 49-0610(6), has unique technical complexities associated with the determination of what ECMs are feasible for the Department, as well as the additional technical complexities associated with a Design-Build Contract. Departments shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the ESPC contracting process, the Department shall be able to reasonably anticipate one (1) or more of the following types of benefits:

(a) Obtaining, through an ESCO, the following types of integrated Personal Services and Work: facility profiling, energy baseline studies, ECMs, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, life cycle costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, M & V services and required documentation as a fully integrated function with a single point of responsibility;

(b) Obtaining, through an ESCO, an Energy Savings Guarantee;

(c) Integrating the Technical Energy Audit phase and the Project Development Plan phase into the design and construction phase of Work on the project;

(d) Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC Personal Services and Work;

(e) Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC services team;

(f) Integrating cost-effective ECMs into an existing building or structure, so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;

(g) Preliminary design, development, implementation and an Energy Savings Guarantee of ECMs into an existing building or structure through an ESPC, as a distinct part of a major remodel of that building or structure that is being performed under a separate remodeling Contract; and

(h) Satisfying local energy efficiency design criteria or requirements.

(3) **Authority.** Departments desiring to pursue an Exemption from the Competitive Bidding requirements of ORS 279C.335 (and, if applicable, ORS 351.086), shall utilize the ESPC form of contracting only in accordance with the requirements of Rules 49-0600 to 49-0690.

(4) **No Findings Required.** No findings are required for an ESPC to be exempt from the Competitive Bidding process for Public Improvement Contracts unless the Department chooses not to comply with the ESPC contracting procedures set forth in Rules 49-0600 to 49-0690.

(5) **Selection.** ESPC selection criteria may include those factors set forth above in Rule 49-0640(2)(a), (b), (c) and (d). Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, Proposers shall disclose in their Proposals the identity of any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.

(6) **Licensing.** If the ESCO is not an Oregon licensed design professional, the Department shall require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the Offer of architectural services, and ORS 672.060(11) regarding the Offer of engineering services that are appurtenant to construction services.

(7) **Performance Security.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO shall provide a performance bond and a payment bond, each for 100% of the full Contract Price, including the construction and design and related professional services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these "design and related professional services" include conventional design services, commissioning services, training services for the Department's operations and maintenance staff, and any similar Personal Services provided by the ESCO under the ESPC Design-Build Contract prior to final completion of construction. M & V services, and any Personal Services or Work associated with the ESCO's Energy Savings Guarantee are not included in these ORS 279C.380(1)(a) "design and related professional services." Nevertheless, a Department may require that the ESCO provide performance security for M & V services and any Personal Services or Work associated with the ESCO's Energy Savings Guarantee, if the Department so provides in the RFP.

(8) **Contracting Requirements.** Departments shall conform their ESPC contracting practices to the following requirements:

(a) General ESPC Contracting Practices. An ESPC involves a multi-phase project, which includes the following contractual elements:

(A) A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the Project Development Plan for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the project.

(B) The various phases of the ESCO's Work will include the following:

(i) The Technical Energy Audit phase of the Work;

(ii) The Project Development Plan phase of the Work;

(iii) A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related Personal Services or Work to actually construct the project; and

(iv) A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the County, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.

(b) **Design-Build Contracting Requirements in ESPCs.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the Department shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in Rule 49-0670(6) above.

(c) **Pricing Alternatives.** The Department may utilize one (1) of the following pricing alternatives in an ESPC:

(A) A fixed price for each phase of the Personal Services and Work to be provided by the ESCO;

(B) A cost reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or

(C) A combination of a fixed fee for certain components of the Personal Services to be performed, a cost reimbursement pricing mechanism for the construction services to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified time period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the County, the ESCO's M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the County's

future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

(d) **Permitted ESPC Scope of Work.** The scope of Work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will pay for themselves over the useful life of the ECMs installed. The permitted scope of Work for ESPCs resulting from a Solicitation under Rules 49-0600 to 49-0690 does not include maintenance services for the project facility.

Stat. Auth.: ORS 279C.335; ORS 279A.065
Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.110 & ORS 351.086

49-0690 Construction Manager/General Contractor (CM/GC)

(1) General. The CM/GC form of contracting, as defined at Rule 49-0610(2), is a technically complex project delivery system. Departments shall use this contracting method only with the assistance of knowledgeable staff or consultants who have a demonstrated capability of managing the CM/GC process in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, public contracting and project management. Unlike the Design-Build form of contracting, the CM/GC form of contracting does not contemplate a "single point of responsibility" under which the Contractor is responsible for successful completion of all Work related to a performance Specification. The CM/GC has defined Contract obligations, including responsibilities as part of the project team along with the Department and design professional, although in CM/GC there is a separate Contract between the County and design professional. In order to utilize the CM/GC method, the Department shall be able to reasonably anticipate the following types of benefits:

(a) **Time Savings.** The Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. The Department may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;

(b) **Cost Savings.** Early Contractor input during the design process is expected to contribute to significant cost savings. The Department may consider value engineering, building systems analysis, life cycle costing analysis and construction planning that lead to cost savings. The Department shall specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; or

(c) **Technical Complexity.** The Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the Department, design professionals and Contractor, in which the Contractor will assist in addressing specific project challenges through pre-construction Personal Services. The Department may consider the need for Contractor input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling.

(2) **Authority.** Departments shall use the CM/GC form of contracting only in accordance with the requirements of these Rules. See particularly Rule 49-0620 on "Use of Alternative Contracting Methods".

(3) **Selection.** CM/GC selection criteria may include those factors set forth above in Rule 49-0640(2)(b).

(4) **Basis for Payment.** The CM/GC process adds specified Construction Manager Personal Services to traditional General Contractor services, requiring full Contract performance within a negotiated Guaranteed Maximum Price (GMP). The basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for Work and Personal Services rendered, which together shall not exceed the GMP. See GMP definition at Rule 49-0610(7) and Pricing Mechanisms in Rule 49-0660.

(5) **Contract Requirements.** Departments shall conform their CM/GC contracting practices to the following requirements:

(a) **Setting the GMP.** The GMP shall be set at an identified time consistent with industry practice, after supporting information reasonably considered necessary to its use has been developed, and the supporting information shall define with particularity both what is included and excluded from the GMP. A set of drawings and Specifications shall be produced establishing the GMP scope.

(b) **Adjustments to the GMP.** The Contract shall clearly identify the standards or factors under which changes or additional Work will be considered outside of the Work scope that warrants an increase in the GMP, as well as criteria for decreasing the GMP. The GMP shall not be increased without a concomitant increase to the scope defined at the establishment of the GMP or most recent GMP amendment.

(c) **Cost Savings.** The Contract shall clearly identify the disposition of any cost savings resulting from completion of the Work below the GMP; that is, under what circumstances, if any, the CM/GC might share in those cost savings, or whether they accrue only to the County's benefit. Unless there is a clearly articulated reason for sharing such cost savings, they shall accrue to the County.

(d) **Cost Reimbursement.** The Contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP, including any category of "General Conditions" (a general grouping of direct costs that are not separately invoiced, subcontracted or included within either overhead or fee), and may also incorporate a mutually-agreeable cost-reimbursement standard.

(e) **Audit.** Cost reimbursements shall be made subject to final audit adjustment, and the Contract shall establish an audit process to ensure that Contract costs are allowable, properly allocated and reasonable.

(f) **Fee.** Compensation for the CM/GC's Personal Services and Work shall include a fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. Costs determined to be included within the fee shall be expressly defined wherever possible. The fee, first expressed as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the selection process. It shall subsequently be expressed as a fixed amount when the GMP is established.

(g) **Incentives.** The Contract shall clearly identify any economic incentives, the specific criteria that apply and their relationship to other financial elements of the Contract (including the GMP).

(h) **Controlled Insurance Programs.** For projects anticipated to exceed $75 Million, the Contract shall clearly identify whether an Owner Controlled or Contractor Controlled Insurance Program is anticipated or allowable. If so, the Contract shall clearly identify anticipated cost savings from reduced premiums, claims reductions and other factors, the allocation of cost savings, and safety responsibilities and/or incentives.

(i) **Early Work.** The RFP shall clearly identify, whenever feasible, the circumstances under which any of the following activities may be authorized and undertaken for compensation prior to establishing the GMP:

(A) Early Procurement of materials and supplies;

(B) Early release of Bid packages for such things as site development; and

(C) Other advance Work related to critical components of the Contract.

(j) **Subcontractor Selection.** The Contract shall clearly describe the methods by which the CM/GC shall publicly receive, open and record Bids or price quotations, and competitively select subcontractors to perform the Contract Work based upon price, as well as the mechanisms by which the CPCA Manager may waive those requirements. The documents shall also describe completely the methods by which the CM/GC and its affiliated or subsidiary entities may compete to perform the Work, including, at a minimum, advance notice to the public of the CM/GC's intent to compete and a public opening of Bids or quotations by the County or an independent party.

(k) **Subcontractor Approvals and Protests.** The Contract may establish whether the County shall approve subcontract awards, and to what extent, if any, the Department will resolve Procurement protests of subcontractors and suppliers. The contract may specify whether the CM/GC acts as the County's representative in this process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the County shall retain the right to monitor the subcontracting process in order to protect County's interests.

(l) **CM/GC Self-Performance.** Whenever feasible, the Contract shall establish the elements of Work the CM/GC may self-perform without competition, including, for example, the Work of the job-site general conditions. In the alternative, the Contract shall include a process for Department approval of CM/GC self-performance.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 297C.335 & ORS 279C.380(2)

49-0695 Post Project Evaluation

(1) Upon completion of and final payment for any Public Improvement contract, or class of Public Improvement contracts in excess of $100,000 for which the County did not use the competitive bidding process, the Department shall prepare and deliver to the Board an evaluation of the Public Improvement contract or the class of Public Improvement contracts.

(2) The evaluation shall include but is not limited to the following matters:

(a) The actual project cost as compared with original project estimates;

(b) The amount of any guaranteed maximum price;

(c) The number of project change orders issued;

(d) A narrative description of successes and failures during the design, engineering and construction of the project;

(e) An objective assessment of the use of the alternative contracting process as compared to the findings prepared to support the use of the alternative contracting process;

(3) The evaluation required by this section:

(a) Shall be made available for public inspection; and

(b) Shall be completed within 30 days of the date the County accepts:

(A) The Public Improvement project; or

(B) The last Public Improvement project if the project falls within a class of Public Improvement projects.

DIVISION 49 CONTRACT PROVISIONS

49-0800 Required Contract Clauses

Departments shall include in all formal Solicitation Documents for Public Improvement Contracts all of the ORS Chapter 279C required Contract clauses, as set forth in the checklist contained in Rule 49-0200(1)(c) regarding Solicitation Documents. The following series of rules provide further guidance regarding particular Public Contract provisions.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 297C.505 to ORS 279C.545 & ORS 279C.800 to 279C.870

49-0810 Waiver of Delay Damages Against Public Policy

No provision shall be placed in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from the County's unreasonable delay in performing the Contract. However, Contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling Contract disputes, or providing for reasonable liquidated damages, are permissible.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.315

49-0815 BOLI Public Works Bond

Pursuant to ORS 279C.830(2), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor shall have a Public Works bond filed with the Construction Contractors board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements.

Stat. Auth: ORS 279A.065
Stats. Implemented: ORS 279C.830

49-0820 Retainage

(1) **Withholding of Retainage.** A Department shall not retain an amount in excess of five (5) percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent (50%) of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of written application containing the surety's written approval, the Department may, in its discretion, reduce or eliminate Retainage on any remaining progress payments. The Department shall respond in Writing to all such applications within a reasonable time. When the Contract Work is ninety-seven and one-half percent (97-1/2%) completed, the Department may, at its discretion and without application by the Contractor, reduce the retained amount to one hundred percent (100%) of the value of the remaining unperformed Contract Work. A Department may at any time reinstate Retainage. Retainage shall be included in the final payment of the Contract Price.

(2) **Form of Retainage.** Unless a Contracting Agency that reserves an amount as retainage finds in writing that accepting a bond or instrument described in part (a) or (b) of this section poses an extraordinary risk that is not typically associated with the bond or instrument, the Contracting Agency, in lieu of withholding moneys from payment, shall accept from the Contractor:

(a) Bonds, securities or other instruments that are deposited and accepted as provided in subsection (4)(a) of this rule; or

(b) A surety bond deposited as provided in subsection (4)(b) of this rule.

(3) Deposit in interest-bearing accounts. Upon request of the Contractor, the County shall deposit cash Retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the County. Earnings on such account shall accrue to the Contractor.

(4) Alternatives to cash Retainage. In lieu of cash Retainage to be held by the County, the Contractor may substitute one (1) of the following:

(a) Deposit of bonds, securities or other instruments:

(A) The Contractor may deposit bonds , securities or other instruments with the County or in any bank or trust company to be held for the benefit of the County. If the County accepts the deposit, the County shall reduce the cash Retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds, securities or other instruments deposited or acquired in lieu of cash Retainage must be of a character approved by the County Chief Financial Officer and may include, without limitation:

(i) Bills, certificates, notes or bonds of the United States.

(ii) Other obligations of the United States or agencies of the United States.

(iii) Obligations of a corporation wholly owned by the Federal Government.

(iv) Indebtedness of the Federal National Mortgage Association.

(v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.

(vi) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

(C) Upon a determination by the Department that all requirements for the protection of the County's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of Retainage.

(b) **Deposit of surety bond.** The County, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Department in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of Retainage. In such cases, Retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(5) Recovery of costs. The County may recover from the Contractor all costs incurred in the proper handling of Retainage, by reduction of the final payment.

(6) **Additional Retainage When Certified Payroll Statements Not Filed.** Pursuant to ORS 279C.845 (7), if a Contractor is required to file certified payroll statements and fails to do so the County shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the County. The County shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements regardless of whether a subcontractor has filed such statements.

Stat. Auth.: ORS 279A.065 & ORS 279.845
Stats. Implemented: ORS 279C.560, ORS 279C.570 & ORS 701.420

49-0830 Contractor Progress Payments

(1) Request for Progress Payments. Each month the Contractor shall submit to the Department its written request for a progress payment based upon an estimated percentage of Contract completion. At the Department's discretion, this request may also include the value of material to be incorporated in the completed Work that has been delivered to the premises and appropriately stored. The sum of these estimates is referred to as the "value of completed Work." With these estimates as a base, the Department will make a progress payment to the Contractor, which shall be equal to:

(a) the value of completed Work;

(b) less those amounts that have been previously paid;

(c) less other amounts that may be deductible or owing and due to the Department for any cause;

(d) Less the appropriate amount of Retainage.

(2) Progress Payments/Acceptance of Work. Progress payments shall not be construed as an acceptance or approval of any part of the Work, and shall not relieve the Contractor of responsibility for defective workmanship or material.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.570

49-0840 Interest

(1) **Prompt payment policy.** A Department shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.

(2) **Interest on progress payments.** Late payment interest shall begin to accrue on payments due and owing on the earlier of 30 Days after receipt of invoice or 15 Days after Department approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of 30 percent.

(3) **Interest on final payment.** Final payment on the Contract Price, including Retainage, shall be due and owing no later than 30 Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent per month until paid.

(4) **Settlement or judgment interest.** In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, shall accrue from the later of the Progress Payment Due Date, or thirty Days after the Contractor submitted a claim for payment to the Department in Writing or otherwise in accordance with the Contract requirements.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.570

49-0850 Final Inspection

(1) **Notification of Completion; Inspection.** The Contractor shall notify the Department in Writing when the Contractor considers the Contract Work completed. Within 15 Days of receiving Contractor's notice, the Department will inspect the project and project records, and will either accept the Work or notify the Contractor of remaining Work to be performed.

(2) **Acknowledgment of acceptance.** When the Department finds that all Work required under the Contract has been completed satisfactorily, the Department shall acknowledge acceptance of the Work in Writing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.570

49-0860 Public Works Contracts

(1) **Generally.** ORS 279C.800 to 279C.870 regulate Public Works Contracts, as defined in ORS 279C.800(5), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR Chapter 839.

(2) **BOLI Notification.** The Department shall provide notification of Award to BOLI as required by ORS 279C.835.

(3) **Required Contract Conditions.** As detailed in the above statutes and rules, every Public Works Contract shall contain the following provisions:

(a) County authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).

(b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).

(c) Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).

(d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.

(e) Requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830.

(A) If no federal funds are being used to fund the work, the wage rates established under ORS 279C.815(2)(a) shall be paid.

(B) If federal funds are being used to fund the work, the wage rates established under ORS 279C.815(2)(b) shall be paid.

(C) The rates may be incorporated into the Specifications by reference, in compliance with OAR 839-025-0020; or, when the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020 and 0035.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.800 to ORS 279C.870

49-0870 Specifications; Brand Name Products

(1) **Generally.** The Solicitation Document shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an Exemption granted under ORS 279C.345(2).

(2) **Equivalents.** A Department may identify products by brand names so long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent," or similar language is included in the Solicitation Document. The Department shall determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.345

49-0880 Records Maintenance; Right to Audit Records

(1) **Records Maintenance; Access.** Contractors and subcontractors shall maintain all fiscal records relating to Contracts in accordance with generally accepted accounting principles ("GAAP"). In addition, Contractors and subcontractors shall maintain all other records necessary to clearly document their performance and any claims arising from or relating to their performance under a Public Contract. Contractors and subcontractors shall make all records pertaining to their performance and any claims under a Contract (the books, fiscal records and all other records, hereafter referred to as "Records") accessible to the Department at reasonable times and places, whether or not litigation has been filed as to such claims.

(2) **Inspection and Audit.** A Department may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Person that has submitted cost or pricing data according to the terms of a Contract to the extent that the Records relate to such cost or pricing data. If the Person shall provide cost or pricing data under a Contract, the Person shall maintain such Records that relate to the cost or pricing data for 3 years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in Writing.

(3) **Records Inspection; Contract Audit.** The County, and its authorized representatives, shall be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's Records, as provided in subsection 1 of this Rule. The Contractor and subcontractor shall maintain the Records and keep the Records accessible and available at reasonable times and places for a minimum period of 3 years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized in Writing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.030, ORS 279C.375, ORS 279C.380 & ORS 279C.440

49-0890 Department Payment for Unpaid Labor or Supplies

(1) **Contract incomplete.** If the Contract is still in force, the County may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If the County chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety shall not be relieved from liability for unpaid claims.

(2) **Contract completed.** If the Contract has been completed and all funds disbursed to the prime Contractor, all claims shall be referred to the Contractor's surety for resolution. The County shall not make payments to subcontractors or suppliers for Work already paid for by the County.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.515

49-0900 Contract Suspension; Termination Procedures

(1) **Suspension of Work.** In the event the County suspends performance of Work for any reason considered by the Department to be in the public interest other than a labor dispute, the Contractor shall be entitled to a reasonable extension of Contract time, and to reasonable compensation for all costs (as defined in the Contract), including a reasonable allowance for related overhead (as defined in the Contract), incurred by the Contractor as a result of the suspension.

(2) **Termination of Contract by mutual agreement for reasons other than default.**

(a) **Reasons for termination.** The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The County suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) **Payment.** When a Contract, or any divisible portion thereof, is terminated pursuant to this subsection (2), the County shall pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination (all as defined in the Contract). The Department shall also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to

unit or itemized pricing under the Contract, payment shall be calculated based on percent of Contract completed (as may be further defined in the Contract). No claim for loss of anticipated profits will be allowed.

(c) **Public interest termination by Department.** A Department may include in its Contracts terms detailing the circumstances under which the Contractor shall be entitled to compensation as a matter of right in the event the Department unilaterally terminates the Contract for any reason considered by the Department to be in the public interest.

(d) **Responsibility for completed Work.** Termination of the Contract or a divisible portion thereof pursuant to this Rule shall not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

(e) **Remedies cumulative.** The Department may, at its discretion, avail itself of any or all rights or remedies set forth in these Rules, in the Contract, or available at law or in equity.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.650, ORS 279C.655, ORS 279C.660, ORS 279C.665 & ORS 279C.670

49-0910 Changes to the Work and Contract Amendments

(1) Definitions for Rule. As used in this Rule:

(a) "Amendment" means a Written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the Work, within the general scope of the original Procurement that requires mutual agreement between the Department and the Contractor.

(b) "Changes to the Work" means a mutually agreed upon change order, or a construction change directive or other Written order issued by the County or its authorized representatives to the Contractor requiring a change in the Work within the general scope of a Public Improvement Contract and issued under its changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or Contract time, or both, for the changed Work.

(c) "Changes Provisions" Changes to the Work are anticipated in construction and, accordingly, Departments shall include changes provisions in all Public Improvement Contracts that detail the scope of the changes clause, provide pricing mechanisms, authorize the County or its authorized representatives to issue Changes to the Work and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the Work are agreed to or issued consistent with the Contract's changes provisions they are not considered to be new Procurements and an Exemption from Competitive Bidding is not required.

(2) Contract Amendments. Contract Amendments to Public Improvement Contracts are not considered to be new Procurements and an Exemption from Competitive Solicitation is not required to add work when:

(a) The work added is within the general scope of the original Contract, or if the work is outside the scope of the original Contract, it can be performed by the Contractor at a cost below what the Department estimates it would cost if a contract for that work were awarded through sealed competitive bidding, competitive quotations, or competitive proposals. Additional work is "within the general scope of the original Contract for the purposes of this subsection if the additional work is logically related to the contract

work; prudent contract management, engineering or construction practices dictate that the additional work ought to be performed in conjunction with the original contract work; the additional work is located at the same site as the contract work; and the contract objectively establishes the prices, or the method of arriving at the price, for the additional work;

(b) The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities in Work, project site, relative dollar values, differences in risk allocation and whether the original Procurement was accomplished through Competitive Bidding, Competitive Proposals, competitive Quotes, sole source or Emergency Contract;

(c) In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the findings supporting the Competitive Bidding Exemption; and

(d) The Amendment is made consistent with this rule and any other applicable legal requirements.

(3) Limits on Contract Increases. The aggregate increase resulting from all amendments to a Contract shall not exceed 20 percent of the original Contract Price, except that amendments to Contracts for the renovation or remodeling of a building may be increased up to 33 percent of the original Contract Price. For contracts of $75,000 or less increases in excess of these limits shall be approved by the CPCA Manager prior to authorization of performance of the Work. For contracts in excess of $75,000 increases in excess of these limits shall be submitted to the CPCA Manager to obtain approval by the Board prior to authorization of performance of the Work.

(4) Applicability of Rule. Every Public Improvement Contract shall comply with the requirements of this Rule including Contracts advertised, or if not advertised entered into prior to March 1, 2005.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279C.400(1)

DIVISION 55 CONTRACTS WITH QUALIFIED REHABILITATION FACILITIES

55-0005 Definitions

(1) As used in Rules 55-0005 to 55-00305:

(a) "Price" means the cost to the County of the products and services under contracts procured under the program created by ORS 279.835 to 279.855 as determined by these Division 55 Rules.

(b) "Procurement List" means a listing of those nonprofit agencies for Disabled Individuals that currently are qualified to participate in the program created by ORS 279.835 to 279.850 and includes a list of the products and services offered by QRFs and determined by the State Procurement Office to be suitable for purchase by agencies.

(c) "Qualified Rehabilitation Facility" or "QRF" means an activity center or rehabilitation facility, certified as a community rehabilitation program or as a vocational service provider through the Oregon Department of Human Services, that the State Procurement Office has determined to be qualified to participate in the program created by ORS 279.835 to 279.850.

(d) "QRF Contract" means a Contract entered into under the program created by ORS 279.835 to 279.850

Stat. Auth.: ORS 279.845(1), ORS 184.340
Stats. Implemented: ORS 279.015(1)(b), ORS 279.835 to ORS 279.855

55-0010 Policy

It is the policy of Multnomah County to encourage and assist Disabled Individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for sheltered workshop and activity center products and services, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and need for costly institutionalization. An essential element of this policy is to support sheltered employment to the fullest extent provided by law by contracting for needed Goods and services available from QRFs. The County shall identify contracting opportunities within the organization and Award appropriate Contracts to QRFs in accordance with ORS 279.850 and this Division 55. This policy shall be equally applicable to all County Departments and shall be administered by the CPCA Manager.

55-0015 Procurements from QRFs

(1) When the County intends to procure a product or service that is listed on the Procurement List, it shall procure that product or service, at the Price determined by the State Procurement Office, from a Qualified Rehabilitation Facility if the product or service is of Specifications appropriate to the County's Procurement needs and is available within the time required by the County.

(2) The County shall enter into and renew QRF Contracts only for the specific products or services that are on the Procurement List.

(3) If a QRF is removed from the Procurement List, the County shall not Award or renew a QRF Contract, and the removal from the Procurement List shall constitute sufficient grounds for the County to terminate any outstanding QRF Contract.

(4) No placement of a product or service on the Procurement List shall act to displace a Contractor under an existing Contract with the County for the same product or service prior to the expiration or other termination of the Contractor's Contract with the County. However, where a product or service is on the Procurement List, no existing Contract shall be renewed for such a product or service.

(5) If a QRF submits a competitive bid, Proposal, Quote or other Offer in a competitive Procurement for a Public Contract, then regardless of whether the Offer was accepted, that QRF may not, at any time during the initial term of the Contract for which the QRF submitted a bid, Proposal or Offer, make any claim to the County that the product or service that was the subject of the Offer is on the Procurement List. If, during the Solicitation process, a QRF claims the product or service that is the subject of the Procurement is on the Procurement List, then, if the product or service is determined to have been on the Procurement List at the time the Solicitation Document was issued, the Solicitation process shall be terminated so long as a Contract has not been fully executed at the time the claim is made.

Stat. Auth.: ORS 279.845(1), ORS 184.340
Stats. Implemented: ORS 279.015(1)(b), ORS 279.835 to ORS 279.855

55-0030 Determination of Price/Changes to QRF Contracts

(1) When a product or service on the Procurement List is offered by more than one QRF, a Department may purchase the required product or service from any QRF without competition between QRFs.

(2) Departments may use the formal selection procedure described in Rule 47-0260 to select a QRF to provide a service on the Procurement list, provided that:

(a) The Solicitation shall not request any information concerning price and price shall not be a consideration in making the Award.

(b) The Solicitation shall not be advertised

(c) Notice of the Solicitation shall only be given to those QRFs offering the service on the Procurement List.

(d) After selection of a QRF the price will be determined in accordance with subsection (3)(b) below

(3) **Price.**

(a) **Price for products or services where the Price is listed.** For products or services on the Procurement List where the Price is listed, the Contract shall provide that the County will pay the Price that is listed.

(b) **Price for services where the Price is not listed.** For services for which no price is listed on Procurement List, the Department shall proceed as follows:

(A) The Department shall request that the QRF submit its proposed Price to the County based on the volume or scope of the Work and Specifications provided by the County as prescribed in the proposed contract between the QRF and the County. For janitorial, security and food services where a Living Wage is required to be paid, the Specifications shall state the minimum wage required to be paid.

(B) In submitting its proposed Price to the County the County shall require the QRF to make full disclosure of known costs. The disclosure shall include documentation, on a form prescribed by the State Procurement Office, that the costs proposed will result in a Price that will permit the QRF to recover the amounts prescribed in ORS 279.845(1)(a) The Department shall require that an authorized officer of the QRF certify that the costs claimed are, to the best of the officer's knowledge, reasonable and adequate, and that the proposed Price will permit the QRF to recover the amounts prescribed in ORS 279.845(1)(a).

(C) If the QRF and the County agree on the terms and conditions of a proposed contract and the price for the services to be provided under the proposed contract, the Department shall present the proposed contract (including the agreed Price) to the State Procurement Office for review and approval of the Price. If the QRF and the County cannot agree on the price, the parties shall present the issue of price to the State Procurement Office for determination.

(D) The County shall not execute or implement any Contract under the program created by ORS 279.835 to 279.855 until the State Procurement Office has transmitted notice of the Price approved determined by the State Procurement Office to the County and the QRF.

(c) Re-determinations of Price. The Price established by the State Procurement Office shall apply for the initial term or period of the Contract unless otherwise approved by the State Procurement Office. The State Procurement Office may re-determine a Price at the request of a QRF or County, or at the discretion of the State Procurement Office. Until the State Procurement Office approves a new Price, the QRF shall continue to provide, at the established Price, the service or product in accordance with the scope of Work that was the basis for establishing the existing Price.

(d) The County shall not pay or agree to pay a QRF any amount other than the Price approved by the State Procurement Office. Any Price established by the State Procurement Office for a product or service shall remain in effect until the State Procurement Office approves a new Price.

(e) Departments shall not make material changes (changes that affect the cost of providing the products or services in more than a negligible manner) to the Specifications of a QRF Contract unless the changes are in Writing and have been submitted to the State Procurement Office for a re-determination of Price. If the Department wishes to make a material change to the Specifications from the most recent Solicitation for the product or service, the Department shall notify the QRF in Writing of the specific changes in the scope of Work or other conditions which will be required during the new Contract period. No agreement making a material change in the Specifications shall be executed until State Procurement Office re-determines the Price.

Stat. Auth.: ORS 279.845(1), ORS 184.340
Stats. Implemented: ORS 279.015(1)(b), ORS 279.835 to ORS 279.855

DIVISION 60 EQUAL OPPORTUNITY IN PUBLIC CONTRACTING

60-0010 Purpose

(1) The purpose of this Division is to establish procedures to assure that Multnomah County provides adequate opportunities for Minority Individuals, Women, and MBE, WBE and ESB contractors and subcontractors to participate and compete for business and employment opportunities provided through Contracts with Multnomah County.

60-0020 Policy

(1) It is the intent of Multnomah County to provide opportunities for all segments of the business population to participate in Multnomah County contracting opportunities.

(2) Multnomah County has a compelling governmental interest in prohibiting discrimination in programs, activities, services, benefits and employment whether carried out by the County itself or through a Contractor with whom the County arranges to carry out its programs and activities.

60-0030 Contract Clauses Required

(1) In order to assure opportunity, every County Contract shall include a provision barring discrimination against MBEs, WBEs and ESBs by Contractor and all subcontractors.

(2) Every County Contract shall contain a provision prohibiting discrimination by Contractor and all subcontractors based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income.

60-0031 Good Faith Effort Program

(1) The activities described in ORS 200.045 are standards for Good Faith Efforts to provide equitable opportunities for MBEs, WBEs, and ESBs to participate in subcontract opportunities created through Multnomah County Contracts.

(2) The CPCA Manager shall implement a Good Faith Effort program utilizing the standards described in ORS 200.045 that are determined to be effective to achieve the purpose of this section together with such other standards as are appropriate to such a program. Bid or Proposal Specifications for Contracts requiring Good Faith Effort shall state the requirements necessary to show that a Good Faith Effort has been made and shall require documentation of such effort. The CPCA Manager shall cooperate with other municipal and state agencies to design, to the maximum extent possible, a program that is uniform between agencies.

(3) The CPCA Manager shall determine if the Offer complies with requirements for Good Faith Effort in the Solicitation Document.

(4) If the Good Faith Effort documentation submitted by the Offeror fails to substantially comply with the requirements of the Solicitation Document, the Offer shall be deemed non-responsive and shall be rejected by the CPCA Manager.

60-0040 Requirement for Certification as Equal Employment Opportunity Employer

(1) The CPCA Manager shall implement an Equal Employment Opportunity (EEO) program to assure that all County contractors are certified as providing equal employment opportunities to their employees. The CPCA Manager shall develop forms for this purpose and shall have the authority to approve, deny and revoke certification. A Contractor may appeal a decision to deny certification or revoke certification in accordance with the procedure in ORS 279B.425.

(2) No Department shall enter into a Contract for an amount in excess of $75,000 unless the Contractor is at the time of execution of such Contract certified as an EEO Contractor by the CPCA Manager. Before entering into any such Contract, the Department shall determine from the listing on the CPCA MINT Site or by other available means weather a Contractor is EEO certified.

60-0050 Workforce Requirements in Construction Contracts

(1) For all Contracts designated by the CPCA Manager as being appropriate for such a program, the CPCA Manager shall establish Specifications to be included in the Solicitation Document which require for such Contracts that contractors make reasonable efforts to increase apprenticeship training and work opportunities for Women and Minority Individuals, and, to ensure that their workforce reflects the diversity of Multnomah County and is reasonably consistent with the availability of qualified Women and Minority Individuals. The Specifications shall state the requirements necessary to show that a reasonable effort has been made, shall require documentation of such effort, and shall provide for remedies to the County for failure to comply with any of the specified requirements.

60-0060 Sheltered Market Program

(1) There is hereby established a Sheltered Market Program for MBE, WBE, DBE and ESB contractors performing Public Works Contracts for Multnomah County. The purpose of the program is to provide prime contracting experience for small contractors in order to increase the number of contractors available to bid on Multnomah County Public Works projects, and to increase participation of MBE, WBE, DBE and ESB contractors acting as prime contractors on County Public Works projects to ensure uniform access to public contracting dollars and to improve opportunities for Minorities and Women acting as business owners in the regional construction industry.

(2) Contractors shall be selected for participation in the Sheltered Market Program based on an application approved by the CPCA Manager. Criteria for selection shall include the following:

(a) Contractor shall be a state certified MBE, WBE, DBE or ESB; and

(b) Contractor shall have prior experience performing construction work and shall be currently in business doing construction work; and

(c) Contractor's average annual gross receipts for the three calendar years prior to the application shall be less than $1,000,000. The CPCA Manager shall have the discretion to waive this requirement if waiver will advance the purposes of the program and if all other criteria are met; and

(d) Contractor shall have reported that Contractor has experienced barriers in the conduct of Contractor's business based on race, gender or size of the business.

(3) The CPCA Manager may develop additional criteria for selection of contractors for participation in the program which further the purpose of the program.

(4) A Contractor may appeal a decision to deny participation in the program to the Public Contract Review Board in accordance with the procedure prescribed in ORS 279B.425.

(5) Contracts to be included in the Sheltered Market Program shall be selected by the CPCA Manager from projects estimated at the time of bidding to result in a Contract in excess of the dollar limits set forth in 47-0270 (1) and 49-0160 (1), depending on the type of project, and less than $200,000. The CPCA Manager may include in the program additional Contracts up to $250,000 if inclusion will further the purposes of the program. In the selection of Contracts to be included in the program, the CPCA Manager shall consider the number of contractors in the program which have the qualifications and the capacity to perform the Work. If necessary to assure that all Sheltered Market contractors have an opportunity to participate, Contracts may be offered for bid to only selected contractors within the Sheltered Market Program.

(6) Contracts selected for inclusion in the Sheltered Market Program shall be offered for bid only to contractors admitted to the Sheltered Market Program. Except as provided in subsection (7) below, the Contract shall be awarded to the lowest Responsive Responsible Bidder among those bidding.

(7) For each project selected for the Sheltered Market Program, the Department for the program shall forward to the CPCA Manager a cost estimate for the project. If the lowest Responsive Responsible Bid is more than the cost estimate, the CPCA Manager shall have the option to Award the Contract, re-bid the project within the Sheltered Market Program, or open the bidding on the project to all Bidders. If bidding is opened to all Bidders, the Contract shall then be awarded to the lowest Responsible Responsive Bid from among all Bids received.

(8) The CPCA Manager in cooperation with the City of Portland shall promulgate rules setting forth conditions for continued participation in the program and for graduation from the program. Participation in the Program shall be limited to three years absent extraordinary circumstances.

(9) The CPCA Manager shall prepare a report to the Board of County Commissioners on an annual basis, which provides an evaluation of the program, including information on the subjects set forth in ORS 279C.355. The annual report shall include a recommendation whether the program should be continued. If the CPCA Manager recommends that the Program be continued, the recommendation shall include any proposed improvements to the Program.