

L. FLAHERTY
COUNTY
ATTORNEY
OFFICE

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Multnomah County Oregon

Board of Commissioners & Agenda

connecting citizens with information and services

REVISED 12-17-07

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

Maria Rojo de Steffey, 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

Email: district2@co.multnomah.or.us

Lisa Naito, Commission Dist. 3

501 SE Hawthorne Boulevard, Suite 600
Portland, Or 97214

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Lonnie Roberts, Commission Dist. 4

501 SE Hawthorne Boulevard, Suite 600
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Phone: (503) 988-5213 FAX (503) 988-5262

Email: lonnie.j.roberts@co.multnomah.or.us

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DECEMBER 18 & 20, 2007 BOARD MEETINGS FASTLOOK AGENDA ITEMS OF INTEREST

Pg 2	9:00 a.m. Tuesday Executive Session
Pg 2	10:00 a.m. Tuesday Sheriff's Office Investigations Division Update
Pg 2	10:20 a.m. Tuesday East County Action Plan Update
Pg 3	9:30 a.m. Thursday Opportunity for Public Comment on Non-Agenda Matters
Pg 3	9:35 a.m. Thursday Resolution Creating Joint City-County Taskforce to Study Options for Providing Animal Services
Pg 5	11:20 a.m. Thursday Opportunity for Board Comment on Non-Agenda Matters
December 27, 2007 Regular Meeting Cancelled	

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Tuesday, December 18, 2007 - 9:00 AM
Multnomah Building, Sixth Floor Commissioners Conference Room 635
501 SE Hawthorne Boulevard, Portland

EXECUTIVE SESSION

- E-1 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 are allowed to attend. News Media and All Other Attendees are Specifically Directed Not to Disclose Information that is the Subject of the Session. No Final Decision will be made in the Session. Presented by County Attorney Agnes Sowle. 15-55 MINUTES REQUESTED.
-

Tuesday, December 18, 2007 - 10:00 AM
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

BOARD BRIEFINGS

- B-1 Sheriff's Office Investigations Division Update. Presented by Capt. Monte Reiser. 20 MINUTES REQUESTED.
- B-2 East Portland Action Plan Update. Presented by Mary Li and Barry Manning, City of Portland Planning Bureau. 45 MINUTES REQUESTED.
-

Thursday, December 20, 2007 - 9:30 AM
Multnomah Building, First Floor Commissioners Boardroom 100
501 SE Hawthorne Boulevard, Portland

REGULAR MEETING

CONSENT CALENDAR - 9:30 AM **NON-DEPARTMENTAL**

- C-1 Appointment of Veronica Rodriguez to the Multnomah County Community Health Council

SHERIFF'S OFFICE

- C-2 RESOLUTION Recognizing Annual Authorization for Designation of a Portion of Compensation as a Housing Allowance for Chaplains Serving Inmates and Employees of Multnomah County Sheriff's Office

DEPARTMENT OF COUNTY MANAGEMENT

- C-3 Budget Modification DCM-07 Reclassifying One Position and Adding One Position in Central Human Resources as Determined by the Class/Comp Unit of Central Human Resources

DEPARTMENT OF COMMUNITY SERVICES

- C-4 Amendment No. 1 to 2003 Sauvie Island Bridge ODOT OTIA III Local Grant Agreement, County No. 0410576 - ODOT No. 21,658

REGULAR AGENDA

PUBLIC COMMENT - 9:30 AM

Opportunity for Public Comment on non-agenda matters. Testimony is limited to three minutes per person. Fill out a speaker form available in the Boardroom and turn it into the Board Clerk.

NON-DEPARTMENTAL - 9:30 AM

- R-1 RESOLUTION Approving Fire Code Ordinance 07-01 for Tualatin Valley Fire and Rescue, a Rural Fire Protection District and Repealing Resolution 99-150
- R-2 RESOLUTION Creating a Joint City-County Taskforce to Study Options for Providing Animal Services in the City of Portland
- R-3 Citizen Involvement Work Group Update and Budget Modification NOND-04 Transferring \$50,000 from Contingency to the Citizen Involvement Committee for 1.0 FTE to Assist with Enhanced Citizen Involvement
- R-4 RESOLUTION Appointing the Chair and Members of the Permanent Work Group to Advise the County Commission on Jail Policies and Procedures for a Term of One Year, Commencing on December 21, 2007
- R-5 Second Reading and Possible Adoption of a Proposed ORDINANCE Amending Multnomah County Code, Chapter 12, Business Income Tax

SHERIFF'S OFFICE – 10:15 AM

R-6 Budget Modification MCSO-05 Appropriating \$37,035 in Methamphetamine Enforcement Program Grant Funding

DEPARTMENT OF COMMUNITY SERVICES - 10:20 AM

R-7 First Reading of a Proposed Special Ordinance Designating Disposition of Tax Foreclosed Property

DEPARTMENT OF COUNTY MANAGEMENT – 10:30 AM

R-8 RESOLUTION Approving Revised Public Contract Review Board Rules Effective January 1, 2008

DEPARTMENT OF COUNTY MANAGEMENT – 10:35 AM

R-9 RESOLUTION Approving Agreement with Two Main Development LLC for a Tunnel Easement between the Justice Center and the Courthouse Site and Granting Permits for Construction Staging

R-10 First Reading of an ORDINANCE Amending MCC Sections 9.160 and 9.170 Relating to County Compensation Plan

DEPARTMENT OF HEALTH – 10:45 AM

R-11 NOTICE OF INTENT to Submit a \$50,000 Grant Request to the National Association of Community Health Centers

DEPARTMENT OF COUNTY HUMAN SERVICES – 10:50 AM

R-12 Budget Modification DCHS-13 Increasing Developmental Disabilities Services Federal/State Appropriation by \$199,077 for Regional Crisis Coordination Services and 1.28 FTE

R-13 Budget Modification DCHS-19 Eliminating 1.42 FTE Case Manager Positions and Adding 1.34 FTE New Office Assistant Positions to Better Meet Workload Demand in Aging and Disability Services Division

DEPARTMENT OF COMMUNITY JUSTICE – 11:00 AM

R-14 Budget Modification DCJ-16 Approves a General Fund Contingency Transfer in the Amount of \$142,462 to Fund Phase 2 of the Court Appearance Notification System

NON-DEPARTMENTAL – 11:20 AM

R-15 Budget Modification DCS-06 Increasing County FY08 Revenue and Expense by \$368,387 for Approved Fiscal Year 2007 State Homeland Security Grant

BOARD COMMENT – 11:20 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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Commissioner Jeff Cogen, District 2

MULTNOMAH COUNTY OREGON

501 SE Hawthorne, Suite 600

Portland, Oregon 97214

(503) 988-5219 phone

(503) 988-5440 fax

www.co.multnomah.or.us/cc/ds2/

district2@co.multnomah.or.us

MEMORANDUM

TO: Chair Ted Wheeler
Commissioner Maria Rojo de Steffey
Commissioner Lisa Naito
Commissioner Lonnie Roberts
Clerk of the Board Deb Bogstad

FROM: Marissa Madrigal
Chief of Staff to Commissioner Jeff Cogen

DATE: 12/18/2007

RE: Board Meeting Excused Absences

Commissioner Cogen will be unable to attend the Tuesday, December 18th 2007 Board briefings, but will attend the December 18th Executive Session.

BOGSTAD Deborah L

From: RYAN Matthew O
Sent: Wednesday, December 05, 2007 2:54 PM
To: FARMER Stuart L; TOKOS Derrick I
Cc: KINOSHITA Carol; BOGSTAD Deborah L
Subject: RE: template Multnomah County Resolution

Stuart & Derrick,

I spoke with Eric McMullen of TVF&R; we can put this on the BCC Agenda for 12/20; so we have another week to review the local ordinance for compliance with the County Code. I also asked him to send a copy of the 2004 Ordinance the 2007 one repeals for reference, because he has Stuart's email address that's where it will probably be sent. Thanks.

Matthew O. Ryan
 Assistant County Attorney
 Office of Multnomah County Attorney
 501 SE Hawthorne, 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: RYAN Matthew O
Sent: Tuesday, December 04, 2007 3:57 PM
To: FARMER Stuart L
Cc: TOKOS Derrick I; KINOSHITA Carol
Subject: FW: template Multnomah County Resolution

Stuart,

I'm forwarding your email to Derrick. Attached to the Tigard City Ordinance is a copy of the TVF&R 2007 Ordinance. The TVF&R Ordinance also appears to repeal an earlier one from 2004. It would be good to get a copy of the repealed ordinance. Further the TVF&R was required to file the ordinance with the County Clerk. In Multnomah County the functions of the clerk are divided amongst different parties. Do we have a record of a filing in Multnomah County or is this what is supposed to be happening now?

Is anyone familiar with TVF&R? This short ordinance appears to be its "code", but it simply incorporates the State code. I wonder if there is more to the TVF&R code than this ordinance?

Matthew O. Ryan
 Assistant County Attorney
 Office of Multnomah County Attorney
 501 SE Hawthorne, Suite 500
 Portland, Oregon 97214
 Tel: 503-988-3138; Fax: 503-988-3377
matthew.o.ryan@co.multnomah.or.us

12/5/2007

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From: FARMER Stuart L
Sent: Tuesday, December 04, 2007 3:27 PM
To: RYAN Matthew O
Subject: FW: template Multnomah County Resolution

Here are some examples of adoption regarding the TVFD ordinance amendment.

-----Original Message-----

From: McMullen, Eric T. [mailto:Eric.McMullen@tvfr.com]
Sent: Tuesday, December 04, 2007 9:18 AM
To: FARMER Stuart L
Cc: BOGSTAD Deborah L
Subject: RE: template Multnomah County Resolution

As per your request, see attached documents.

From: FARMER Stuart L [mailto:stuart.l.farmer@co.multnomah.or.us]
Sent: Thursday, November 29, 2007 9:58 AM
To: McMullen, Eric T.
Subject: RE: template Multnomah County Resolution

That would work, could you forward me one of them to review?

-----Original Message-----

From: McMullen, Eric T. [mailto:Eric.McMullen@tvfr.com]
Sent: Wednesday, November 28, 2007 10:37 AM
To: FARMER Stuart L
Subject: RE: template Multnomah County Resolution

Negative, I am still working with Washington County also and haven't gotten that far. I do have copies from the cities of Sherwood and Tigard, but for some reason both of them did ordinances not resolutions.

From: FARMER Stuart L [mailto:stuart.l.farmer@co.multnomah.or.us]
Sent: Wednesday, November 28, 2007 10:32 AM
To: McMullen, Eric T.
Subject: RE: template Multnomah County Resolution

Eric, do you have the resolution that you have brought before Washington County? I would be curious to see the language.

Thank you.

-----Original Message-----

From: BOGSTAD Deborah L
Sent: Wednesday, November 28, 2007 10:18 AM
To: Eric.McMullen@TVFR.com
Cc: FARMER Stuart L
Subject: template Multnomah County Resolution

12/5/2007

Mr. McMullen, here is the 1999 resolution as well as an updated template for you to complete. It would be very helpful if you provide some language for the first general information 2 sentence on the Agenda Placement Request (APR) form as well.

Email your code and complete documents to me and I'll see that it is reviewed and signed off by the County Attorney and placed on the Board meeting agenda. The Board meets at 9:30 a.m. on Thursdays, so December 6, 13 and 20, 2007. (The December 27 meeting is cancelled.) The January meetings are January 3, 10, 27, 24 and I'm not sure about the 31. It would be nice if you or someone from the district could make it to the meeting to give a very brief explanation and respond to any questions the Board may have.

Thank you.

Deb Bogstad, Board Clerk
Multnomah County Commissioners
501 SE Hawthorne Boulevard, Suite 600
Portland, Oregon 97214-3587
(503) 988-3277 phone
(503) 988-3013 fax
deborah.l.bogstad@co.multnomah.or.us
<http://www.co.multnomah.or.us/cc/index.shtml>



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 12-20-07
Agenda Item #: C-1
Est. Start Time: 9:30 AM
Date Submitted: 12-10-07

Agenda Title: Appointment of Veronica Rodriguez to the Multnomah County Community Health Council

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

Requested Meeting Date: December 20, 2007 Amount of Time Needed: Consent Agenda
Department: Non-Departmental Division: Chair's Office
Contact(s): Tara Bowen-Biggs
Phone: (503) 988-3308 Ext. 83953 I/O Address: 503/600
Presenter(s): N/A

General Information

1. What action are you requesting from the Board?

Request board approval of appointment of Veronica Rodriguez to the Multnomah County Community Health Council.

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 is required under federal guidelines and County Code to have a Community Health Council (CHC). The CHC assists and advises the County Health Department in promoting its vision of health people in healthy communities. The CCHC supports and guides the Health Department in its mission to provide comprehensive health care that is quality driven, affordable and culturally competent to the people of Multnomah County. It provides input and feedback for development, implementation and evaluation of Health Department programs including, but not limited to all programs funded through the Federal Bureau of Primary Health Care. The CHC also serves as the Citizen Budget Advisory Committee for the County Health Department. Members can range from 9 to 25 members: consumers of County health programs constitute the majority; remaining members are health care providers and representatives of the community. Members are appointed to three year terms by the County Chair from nominees selected by the current Council with approval of the

Board of County Commissioners. Kate Yen is the manager of the Community Health Council.

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

No fiscal impact

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

No legal and/or policy issues involved.

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:



Date: 12/10/2007



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

Board Clerk Use Only

Meeting Date: 12/20/07
Agenda Item #: C-2
Est. Start Time: 9:30 AM
Date Submitted: 12/12/07

Agenda Title: RESOLUTION Recognizing Annual Authorization for Designation of a Portion of Compensation as a Housing Allowance for Chaplains Serving Inmates and Employees of Multnomah County Sheriff's Office

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

Date Requested: December 20, 2007 Time Requested: N/A
Department: Sheriff's Office Division: Business Services
Contact(s): Wanda Yantis
Phone: 503-988-4455 Ext. 84455 I/O Address: 503/350
Presenter(s): Consent Calendar

General Information

1. What action are you requesting from the Board?

MCSO recommends the adoption of a resolution designating a portion of the compensation received by two of its Chaplains to be used as a Housing Allowance.

2. Please provide sufficient background information for the Board and the public to understand this issue.

The Multnomah County Sheriff's Office employs Edward Stelle and Lewis Kyle as Chaplains serving inmates and employees of Multnomah County Sheriff's Office. The Sheriff's Office does not provide housing to either Chaplain. Based on 26 USC § 107(2) allows clergy to exclude from the calculation of their gross income, the housing allowance paid as part of their compensation, to the extent used by them to rent or provide a home.

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

The following Chaplains are allowed to designate the following amounts of their compensation as a housing allowance for calendar year 2008, subject to the requirements and limitations of internal revenue law:

Chaplain	Housing Allowance Amount Per Annum
----------	---------------------------------------

Edward Stelle

\$10,000

Lewis Kyle

\$19,000

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

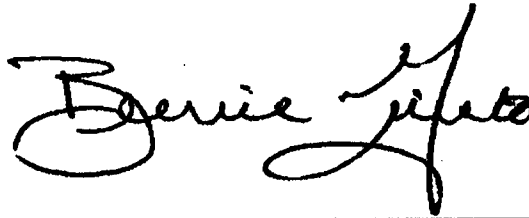
Allowance is in accordance with (US Code) 26 USC § 107(2).

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

None.

Required Signature

**Elected Official or
Department/Agency
Director:**

A handwritten signature in black ink, appearing to read "Bernie Lefko". The signature is written in a cursive, flowing style. It is positioned above a horizontal line.

Date: 12/12/07



Community Health Council
MULTNOMAH COUNTY OREGON

426 SW Stark Street, 8th Floor
Portland, Oregon 97204

November 26, 2007

To: Tara Bowen – Biggs
Multnomah County Chair's Office

From: Kate Yen
Community Health Council Manager

Re: *Council Nomination*

RECEIVED
NOV 28 2007

Dear Tara,

In accordance with its bylaws, the Multnomah County Community Health Council submits the following nomination to the Chair of the Board of County Commissioners.

- **Veronica Rodriguez, Consumer Member, fulfilling the first of a three year term through 10/31/10.**

Veronica is a consumer member representing La Clinica de Buena Salud. She is very active in the Hispanic community and will serve as a great advocate for patients at La Clinica as well as the Health Department. She has been consistently attending Council meetings as a guest for the past six months, bringing back pertinent information to patients and has offered valuable insight and resources to the Council. I am delighted that Veronica has been nominated to serve on the Council.

Thanks for your help with this nomination. Please feel free to contact me if you have any questions or concerns at (503) 988-3674 ext. 26113.

Sincerely,

A handwritten signature in black ink, appearing to be "Kate Yen", written over a horizontal line.

Kate Yen
Community Health Council Manager

CC: Lillian Shirley, Health Department Director



Public Health
Prevent. Promote. Protect.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Annual Authorization for Designation of a Portion of Compensation as a Housing Allowance for Chaplains Serving Inmates and Employees of Multnomah County Sheriff's Office

The Multnomah County Board of Commissioners Finds:

- a. The Multnomah County Sheriff's Office employs Edward Stelle and Lewis Kyle as chaplains serving inmates and employees of Multnomah County Sheriff's Office.
- b. The Sheriff's Office does not provide housing to either chaplain.
- c. 26 USC §107(2) allows clergy to exclude from the calculation of their gross income the housing allowance paid as part of their compensation, to the extent used by them to rent or provide a home.

The Multnomah County Board of Commissioners Resolves:

The following chaplains are allowed to designate the following amounts of their compensation as a housing allowance for calendar year 2008, subject to the requirements and limitations of internal revenue law:

<u>Chaplain</u>	<u>Housing Allowance Amount Per Annum</u>
Edward Stelle	\$10,000
Lewis Kyle	\$19,000

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES A. SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
Jacquie Weber, Assistant County Attorney

SUBMITTED BY:
Bernie Giusto, Multnomah County Sheriff

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 07-188

Annual Authorization for Designation of a Portion of Compensation as a Housing Allowance for Chaplains Serving Inmates and Employees of Multnomah County Sheriff's Office

The Multnomah County Board of Commissioners Finds:

- a. The Multnomah County Sheriff's Office employs Edward Stelle and Lewis Kyle as chaplains serving inmates and employees of Multnomah County Sheriff's Office.
- b. The Sheriff's Office does not provide housing to either chaplain.
- c. 26 USC §107(2) allows clergy to exclude from the calculation of their gross income the housing allowance paid as part of their compensation, to the extent used by them to rent or provide a home.

The Multnomah County Board of Commissioners Resolves:

The following chaplains are allowed to designate the following amounts of their compensation as a housing allowance for calendar year 2008, subject to the requirements and limitations of internal revenue law:

<u>Chaplain</u>	<u>Housing Allowance Amount Per Annum</u>
Edward Stelle	\$10,000
Lewis Kyle	\$19,000

ADOPTED this 20th day of December, 2007



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES A. SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Jacquie Weber, Assistant County Attorney

SUBMITTED BY:
Bernie Giusto, Multnomah County Sheriff



MULTNOMAH COUNTY

AGENDA PLACEMENT REQUEST (long form)

APPROVED : MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-3 DATE 12-20-07
ANA KARNES, ASST BOARD CLERK

Board Clerk Use Only

Meeting Date: 12/20/07
Agenda Item #: C-3
Est. Start Time: 9:30 AM
Date Submitted: 12/03/07

BUDGET MODIFICATION: DCM - 07

Budget Modification DCM-07 Reclassifying One Position and Adding One
Agenda Position in Central Human Resources as Determined by the Class/Comp Unit of
Title: Central Human Resources

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

Requested Meeting December 20, 2007 **Amount of Time Needed:** 5 minutes
Department: County Management **Division:** County Human Resources
Contact(s): Bob Thomas
Phone: 503 988-4283 **Ext.** 84283 **I/O Address:** 503/531
Presenter(s): Travis Graves

General Information

1. What action are you requesting from the Board?

The department is requesting Board approval of a budget modification reclassifying one position and adding one position in Central HR 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.

The Department of County Management is asking the Board to approve reclassification and position requests for the following two positions:

County Human Resources

Position Title (Old)	Position Title (New)	Position Number	FTE
Program Manager Sr	Human Resources Manager 1	712438	No change
NA	Human Resources Technician	New	+ 1.0 FTE

This action reclassifies the Assistant HR Director position (Program Manager Sr) to an HR Evaluation Manager (HR Manager 1) level and uses existing funds to add a second position providing HR tech support to the Class Comp Unit. The HR Evaluation Mgr (HRM1 position) supports the Chair's Office Employment Equity Initiative and is responsible to implement countywide systems to evaluate County employment practices and procedure compliance with Personnel Rules and state/federal laws. The HR Tech will provide full time support functions to the Class Comp Unit.

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

No fiscal impact for the current year. Positions are considered to be ongoing and future budget requests will include costs for cost of living or merit increases, as appropriate.

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?

Risk Management Fund service reimbursement revenue is increased by \$4,219.

- What budgets are increased/decreased?

Risk Management Fund is increased by \$4,219.

- What do the changes accomplish?

Position reclassification and personnel action described in section 2.

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

Position reclassification and personnel action described in section 2.

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

Not applicable to this action.

- 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?

Ongoing.

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

N/A

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

N/A

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

ATTACHMENT B

BUDGET MODIFICATION: DCM - 07

Required Signatures

Elected Official or
Department/
Agency Director:

Carol M. Ford

Date: 11/29/07

Budget Analyst:

Debra

Date: 11/29/07

Department HR:

Carl R. Quigley

Date: 12/03/07

Countywide HR:

Joi E. Orr

Date: 11/30/07

Budget Modification ID: **DCM-07****EXPENDITURES & REVENUES**

Please show an increase in revenue as a negative value and a decrease as a positive value for consistency with MERLIN.

Budget/Fiscal Year: 2008

Line No.	Fund Center	Fund Code	Func. Area	Accounting Unit			Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
				Internal Order	Cost Center	WBS Element						
1	72-80	1000	20		705250		60000	296,101	263,017	(33,084)		Decrease Permanent
2	72-80	1000	20		705250		60130	90,269	81,321	(8,948)		Decrease Salary Related
3	72-80	1000	20		705250		60140	56,765	54,615	(2,150)	(44,182)	Decrease Insurance Benefits
4	72-80	1000	20		706165		60000	177,990	122,562	(55,428)		Decrease Permanent
5	72-80	1000	20		706165		60130	52,816	36,698	(16,118)		Decrease Salary Related
6	72-80	1000	20		706165		60140	31,580	22,975	(8,605)	(80,151)	Decrease Insurance Benefits
7	72-80	1000	20		705180		60000	224,831	289,831	65,000		Increase Permanent
8	72-80	1000	20		705180		60130	72,149	93,008	20,859		Increase Salary Related
9	72-80	1000	20		705180		60140	44,629	58,859	14,230	100,089	Increase Insurance Benefits
10	72-80	1000	20		705100		60100	25,000	47,000	22,000		Increase Temporary
11	72-80	1000	20		705100		60135	0	1,500	1,500		Increase Salary Related
12	72-80	1000	20		705100		60145	0	744	744	24,244	Increase Insurance Benefits
13	72-10	3500	0020		705210		50316		(4,219)	(4,219)		Increase Service Reimb
14	72-10	3500	0020		705210		60330		4,219	4,219	0	Increase Offsetting Expend
15									0			
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						ANNUALIZED			
Change on a <u>full year basis</u> even though this action affects only a part of the fiscal year (FY).									
Fund	Job #	HR Org	Position Title	Position Number	FTE	BASE PAY	FRINGE	INSUR	TOTAL
1000	9362	64647	Program Manager Sr	712438	(0.50)	(55,428)	(16,118)	(8,605)	(80,151)
1000	9362	64675	Program Manager Sr	712438	(0.50)	(55,428)	(16,118)	(8,605)	(80,151)
1000	9715	64730	Human Resources Mgr 1	712438	1.00	65,000	20,859	14,230	100,089
1000	9061	64647	Human Resources Technician	New	1.00	44,688	14,340	12,910	71,938
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
			TOTAL ANNUALIZED CHANGES		1.00	(1,168)	2,963	9,930	11,725

CURRENT YEAR PERSONNEL DOLLAR CHANGE									
Calculate costs/savings that will take place <u>in this FY</u> ; these should explain the actual dollar amounts being changed by this Bud Mod.									
						CURRENT YEAR			
Fund	Job #	HR Org	Position Title	Position Number	FTE	BASE PAY	FRINGE	INSUR	TOTAL
1000	9362	64647	Program Manager Sr	712438	(0.50)	(55,428)	(16,118)	(8,605)	(80,151)
1000	9362	64675	Program Manager Sr	712438	(0.50)	(55,428)	(16,118)	(8,605)	(80,151)
1000	9715	64730	Human Resources Mgr 1	712438	1.00	65,000	20,859	14,230	100,089
1000	9061	64647	Human Resources Technician	New	0.50	22,344	7,170	6,455	35,969
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
			TOTAL CURRENT FY CHANGES		0.50	(23,512)	(4,207)	3,475	(24,244)

705250



MULTNOMAH COUNTY

AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 12/20/07
Agenda Item #: C-4
Est. Start Time: 9:30 AM
Date Submitted: 12/05/07

Agenda Title: **Amendment No. 1 to 2003 Sauvie Island Bridge ODOT OTIA III Local Grant Agreement, County No. 0410576 - ODOT No. 21,658**

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

Requested Meeting Date: December 20, 2007 Amount of Time Needed: Consent Calendar
Department: Community Services Division: Land Use & Trans Program
Contact(s): Jon Henrichsen
Phone: (503) 988 3757 Ext. 228 I/O Address: 446
Presenter(s): Jon Henrichsen

General Information

1. What action are you requesting from the Board?

Approval of Amendment No. 1 to the OTIA Local Grant Agreement for the Sauvie Island Bridge.

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 OTIA III program potentially has funding remaining from projects that did not require the entire grant allocation. The Multnomah County Bridge Section has requested \$3,000,000 of this grant money for the Sauvie Island Project. The County's request has been approved, and we are currently behind on two other projects in prioritization for funding. This IGA allows the OTIA program to grant up to \$3,000,000 additional dollars from unused OTIA III grant funds to the Sauvie Island Bridge project. If and when money becomes available, it will be distributed first to the projects ahead of the Sauvie Island Project until they are fully funded, and then to the Sauvie Island Project, up to a maximum of \$3,000,000. Funding will be accomplished by preparing an exhibit to this amendment describing the amount being granted. The exhibit will be signed by the County Chair to signify the County's agreement to accept the funds and the obligations that accompany that acceptance.

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

Receipt of up to \$3,000,000 in grant funding to the Sauvie Island Bridge Project from the OTIA III program.

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

The Board has previously committed to completing the Sauvie Island Bridge Project. This funding will assist in accomplishing that task.

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

Extensive public meetings and public involvement took place during the design phase of the Sauvie Island Bridge Project. During construction, there have been regular meetings with key stakeholders as construction impacts dictated.

Required Signature

**Elected Official or
Department/
Agency Director:**



Date: 12/05/07

MULTNOMAH COUNTY CONTRACT APPROVAL FORM (CAF)

Pre-approved Contract Boilerplate (with County Attorney signature) ☒ Attached ☐ Not Attached Contract #: 0410576
Amendment #: 1

CLASS I Based on Informal / Intermediate Procurement	CLASS II Based on Formal Procurement	CLASS III Intergovernmental Contract (IGA)
<input type="checkbox"/> Personal Services Contract	<input type="checkbox"/> Personal Services Contract	<input type="checkbox"/> Expenditure Contract
PCRB Contract <input type="checkbox"/> Goods or Services <input type="checkbox"/> Maintenance or Licensing Agreement <input type="checkbox"/> Public Works / Construction Contract <input type="checkbox"/> Architectural & Engineering Contract	PCRB Contract <input type="checkbox"/> Goods or Services <input type="checkbox"/> Maintenance or Licensing Agreement <input type="checkbox"/> Public Works / Construction Contract <input type="checkbox"/> Architectural & Engineering Contract	<input checked="" type="checkbox"/> Revenue Contract <input type="checkbox"/> Grant Contract <input type="checkbox"/> Non-Financial Agreement
<input type="checkbox"/> Revenue Contract <input type="checkbox"/> Grant Contract <input type="checkbox"/> Non-Financial Agreement	<input type="checkbox"/> Revenue Contract <input type="checkbox"/> Grant Contract <input type="checkbox"/> Non-Financial Agreement	<input type="checkbox"/> INTER-DEPARTMENTAL AGREEMENT (IDA)

Department: Community Services Division/ Program: Land Use and Trans Program Date: 11/29/07
Originator: Jon Henrichsen Phone: (503) 988-3757 x228 Bldg/Room: 446
Contact: Cathy Kramer Phone: (503) 988-5050 x22589 Bldg/Room: 425/Yeon

Description of Contract: Amendment No. 1 to ODOT Intergovernmental Agreement No. 21,658 for OTIA III Local Agency Grant funding for potentially up to \$3,000,000 in additional funding for the Sauvie Island Bridge Project.

RENEWAL: ☐ PREVIOUS CONTRACT #(S) _____ EEO CERTIFICATION EXPIRES _____
PROCUREMENT, _____ ISSUE _____ EFFECTIVE _____ END _____
EXEMPTION OR _____ DATE: _____ DATE: _____ DATE: _____
CITATION # _____
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	
Address	355 Capitol Street, NE, Room 326			(If different)	
City/State	Salem OR			Payment Schedule / Terms:	
ZIP Code	97301-3871			<input type="checkbox"/> Lump Sum \$ _____	<input type="checkbox"/> Due on Receipt
Phone	(503) 986-3153/Fax: (503) 986-3290 (Julie Redden)			<input type="checkbox"/> Monthly \$ _____	<input type="checkbox"/> Net 30
Employer ID# or SS#	N/A			<input type="checkbox"/> Other \$ _____	<input type="checkbox"/> Other
Contract Effective Date	6/15/2004	Term Date	6/30/2009	<input type="checkbox"/> Price Agreement (PA) or Requirements Funding Info:	
Amendment Effect Date	12/20/2007	New Term Date	6/30/2009		
Original Contract Amount	\$ 25,000,000.00			Original PA/Requirements Amount	\$ _____
Total Amt of Previous Amendments	\$ 0			Total Amt of Previous Amendments	\$ _____
Amount of Amendment	\$ 3,000,000.00			Amount of Amendment	\$ _____
Total Amount of Agreement	\$ 28,000,000.00			Total PA/Requirements Amount	\$ _____

REQUIRED SIGNATURES:

Department Manager _____ DATE _____
County Attorney _____ DATE _____
CPCA Manager _____ DATE _____
County Chair _____ DATE _____
Sheriff _____ DATE _____
Contract Administration _____ DATE _____

COMMENTS: (WBS: 6700RT6013D)

2003 OREGON TRANSPORTATION INVESTMENT ACT
Local Grant Agreement
Multnomah OTIA III Local Agency Bridges
Amendment No. 1

The State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "ODOT", and MULTNOMAH COUNTY, acting by and through its Board of Commissioners, hereinafter referred to as "Agency", entered into an Agreement on June 30, 2004. Said Agreement covers Multnomah County OTIA III Local Agency Bridge.

It has now been determined by ODOT and Agency that the Agreement referenced above, although remaining in full force and effect, shall be amended by this Agreement to extend the time, revise Exhibit A, and update language. Except as expressly amended below, all other terms and conditions of the Agreement, as previously amended, are still in full force and effect.

Paragraph 3 of Recitals, Page 1, which reads:

3. By the authority granted in ORS 190.110, 366.770 and 366.775 state agencies may enter into agreements with counties, cities, and units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

Shall be deleted in its entirety and amended to read:

3. By the authority granted in ORS 190.110, 366.572 and 366.576 state agencies may enter into agreements with counties, cities, and units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

Insert new Paragraph 5, Recitals, Page 1, to read as follows:

5. The Local Agency Bridge Selection Committee (LABSC) determined at its April 30, 2007 meeting that Agency will be eligible for an additional \$3,000,000 in Oregon Transportation Investment Act (OTIA) III funds for Bridge Number 02641 (Sauvie Island Road over Sauvie Island) conditioned upon the availability of additional funds from costs savings on other OTIA III bridge projects and approval by the Oregon Transportation Commission..

Paragraph 2 of Terms of Agreement, Page 2, which reads:

2. The total estimated cost of the Agency Project is \$33,808,000. The grant amount shall be limited to \$25,000,000. It is anticipated that any investment earnings associated with investment of the grant proceeds plus the grant amount will not

Multnomah County/ODOT
Agreement No. 21,658
Amendment No. 1

exceed the estimated cost of the Agency Project. Agency shall be responsible for all costs, including inflationary cost increases, in excess of grant amount and any investment earnings. Exhibit A identifies the estimated cost and grant share for each individual bridge project.

Shall be deleted in its entirety and amended to read:

2. The total estimated cost of the Agency Project is \$52,100,000. The grant amount shall be limited to \$25,000,000. It is anticipated that any investment earnings associated with investment of the grant proceeds plus the grant amount will not exceed the estimated cost of the Agency Project. Agency shall be responsible for all costs, including inflationary cost increases, in excess of grant amount and any investment earnings. Exhibit A1 identifies the estimated cost and grant share for each individual bridge project. Should additional funds become available, ODOT will increase OTIA III funds up to an amount not to exceed \$28,000,000 to cover the cost of replacing Bridge No. 02641 (Sauvie Island Bridge). Should additional funds be added, under no circumstances will the new total grant amount exceed of \$28,000,000.

Insert new Paragraph 3, Terms of Agreement, Page 2, to read as follows:

3. The ODOT Highway Finance Manager and the Chair of the Multnomah County Board of Commissioners identified in this Agreement shall have authority to add funds to the Agreement by amending the grant amount in the exhibit, signing and dating the Exhibit. Future amendments to the Exhibit A1 increasing the grant amount will be identified as Exhibit A2, Exhibit A3, etc. ODOT shall send a copy of each fully signed amended of the Exhibit to Agency and ODOT's Office of Procurement, Attention: Intergovernmental Agreements, 455 Airport Rd. SE Bldg. K, Salem OR 97301. Amendments to this Agreement, other than the grant amount, will require complete review and approval, and execution by the original signatories. Two OTIA III bridge projects with other agencies are in line to receive returned OTIA III funds prior to Multnomah County receiving additional funds. The Agencies are: Douglas County in the amount of \$2,195,000; and Clackamas County in the amount of \$3,235,149.

Paragraphs 3 and 4 of Terms of Agreement shall be re-numbered as Paragraphs 4 and 5.

Insert new Paragraph 6, Terms of Agreement, Page 2, to read as follows:

6. Agency understands that no additional OTIA III grant funds will be added to this Agreement until the following occur: a) OTC approves additional OTIA III grant funds to be used for this project if funds become available, and b) an amendment to this Agreement, revising the attached Exhibit, is signed by all required parties to allow additional funds to be added to the project should they become available.

Paragraph 5 of ODOT Obligations, Page 3, which reads:

5. ODOT's Program Liaison for this Grant Agreement is: Local Government Section Manager, 355 Capitol Street NE, Room 222, Salem, OR 97301-3871; 503-986-2789.

Shall be deleted in its entirety and amended to read:

5. ODOT's Project Liaison for this Grant Agreement is ODOT's Highway Finance Manager; 355 Capitol Street NE, Room 212, Salem, OR 97301-3871; telephone 503.986.3880.

Insert new Paragraph 6, ODOT Obligations, Page 3, to read as follows:

6. ODOT shall submit a request to the Oregon Transportation Commission (OTC) to approve the addition of OTIA III grant funds in the amount of \$3,000,000 to be applied toward the Sauvie Island Bridge No. 02641, should additional funds become available.

Paragraph 5 of Agency Obligations, Page 4, which reads:

5. Agency agrees to comply with all Federal, State, and local laws, regulations, executive orders and ordinances applicable to the work under this agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which hereby are incorporated by reference.

Shall be deleted in its entirety and amended to read:

5. Agency agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, which hereby are incorporated by reference.

Insert new Paragraph 16, Agency Obligations, Page 9, to read as follows:

16. Agency's Project Liaison for this Agreement is Jon Henrichsen, Engineering Services Manager, Multnomah County, 1403 SE Water Avenue, Portland, OR 97214; or designee; telephone (503)988-3757; email jon.p.henrichsen@co.multnomah.or.us. Jon will obtain the signature of the Chair of the Multnomah County Board of Commissioners, or his designee on Exhibits to add funds. The Chair, or his designee, shall have full authority to sign Exhibits to this Agreement for the purpose of adding funds and no action will be required by the Multnomah County Board of Commissioners to add said funds.

Paragraph 6 of General Provisions, Page 7, which reads:

6. Agency shall maintain records of the Agency Project, including all payments made out of the Agency Project Fund. Agency acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

Shall be deleted in its entirety and amended to read:

6. Agency shall maintain records of the Agency Project, including all payments made out of the Agency Project Fund. Agency acknowledges and agrees that ODOT, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

EXHIBIT A shall be deleted in its entirety and hereby replaced with EXHIBIT A1, attached hereto and by this reference made a part hereof. All references to EXHIBIT A in the Agreement are hereby deleted and shall hereinafter be referred to as Exhibit A1.

This amendment 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 amendment so executed shall constitute an original.

Except as expressly amended above, all other terms and conditions of the Agreement are still in full force and effect. The Parties certify that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this amendment and with the same effect as though made at the time of this amendment.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year hereinafter written.

The Oregon Transportation Commission approved this Project on March 3, 2004.

The Oregon Transportation Commission on March 3, 2004 authorized the Director to approve and execute OTIA III agreements.

Multnomah County/ODOT
Agreement No. 21,658
Amendment No. 1

Signature Page to Follow

Multnomah County/ODOT
Agreement No. 21,658
Amendment No. 1

MULTNOMAH COUNTY, by and through its
Board of Commissioners

By _____
Chair

By _____
Commissioner

By _____
Commissioner

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
County Counsel

Date _____

STATE OF OREGON, by and through
its Department of Transportation

By _____
Director

Date _____

APPROVAL RECOMMENDED

By _____
Darel Capps, Highway Finance Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date: _____

RETURN AGREEMENT TO AGENCY:

Cathy Kramer

Multnomah County Land Use and
Transportation

1620 SE 190th Ave

Portland, OR 97233

EXHIBIT A1

**OTIA III BRIDGE PROJECT(S) DESCRIPTION
Multnomah County
Multnomah County OTIA III Local Agency Bridge**

PROJECT DESCRIPTION(S)

Bridge

Numbers Descriptions

02641 Replace Bridge No. 02641 (Sauvie Island Road over Sauvie Island)

ESTIMATED PROJECT SCHEDULE

Bridge Number	Begin Preliminary Engineering	Begin R/W Acquisition	Construction Contract Award	Construction Completion Date
02641	5/1/2003	7/1/2004	10/28/2005	2/28/2009

PROJECT COMPLETION DATE: **December 31, 2009**

PROJECT COST ESTIMATE

Bridge Number	Preliminary Engineering	Right of Way Acquisition	Construction	TOTAL
02641	\$4,642,000	\$1,066,000	\$46,392,000	\$52,100,000

GRANT AMOUNT = \$52,100,000

MULTNOMAH COUNTY CONTRACT APPROVAL FORM (CAF)

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

Contract #: 0410576

Amendment #: 1

CLASS I Based on Informal / Intermediate Procurement	CLASS II Based on Formal Procurement	CLASS III Intergovernmental Contract (IGA)
<input type="checkbox"/> Personal Services Contract <input type="checkbox"/> PCRBR Contract <input type="checkbox"/> Goods or Services <input type="checkbox"/> Maintenance or Licensing Agreement <input type="checkbox"/> Public Works / Construction Contract <input type="checkbox"/> Architectural & Engineering Contract <input type="checkbox"/> Revenue Contract <input type="checkbox"/> Grant Contract <input type="checkbox"/> Non-Financial Agreement	<input type="checkbox"/> Personal Services Contract <input type="checkbox"/> PCRBR Contract <input type="checkbox"/> Goods or Services <input type="checkbox"/> Maintenance or Licensing Agreement <input type="checkbox"/> Public Works / Construction Contract <input type="checkbox"/> Architectural & Engineering Contract <input type="checkbox"/> Revenue Contract <input type="checkbox"/> Grant Contract <input type="checkbox"/> Non-Financial Agreement	<input type="checkbox"/> Expenditure Contract <input checked="" type="checkbox"/> Revenue Contract <input type="checkbox"/> Grant Contract <input type="checkbox"/> Non-Financial Agreement <input type="checkbox"/> INTER-DEPARTMENTAL AGREEMENT (IDA)

Department: Community Services

Originator: Jon Henrichsen

Contact: Cathey Kramer

Division/

Program: Land Use and Trans Program

Phone: (503) 988-3757 x228

Phone: (503) 988-5050 x22589

Date: 11/29/07

Bldg/Room: 446

Bldg/Room: 425/Yeon

Description of Contract: Amendment No. 1 to ODOT Intergovernmental Agreement No. 21,658 for OTIA III Local Agency Grant funding for potentially up to \$3,000,000 in additional funding for the Sauvie Island Bridge 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	355 Capitol Street, NE, Room 326				
City/State	Salem OR			Payment Schedule / Terms:	
ZIP Code	97301-3871			<input type="checkbox"/> Lump Sum \$ _____	<input type="checkbox"/> Due on Receipt
Phone	(503) 986-3153/Fax: (503) 986-3290 (Julie Redden)			<input type="checkbox"/> Monthly \$ _____	<input type="checkbox"/> Net 30
Employer ID# or SS#	N/A			<input type="checkbox"/> Other \$ _____	<input type="checkbox"/> Other
Contract Effective Date	6/15/2004	Term Date	6/30/2009	<input type="checkbox"/> Price Agreement (PA) or Requirements Funding Info:	
Amendment Effect Date	12/20/2007	New Term Date	6/30/2009		
Original Contract Amount	\$ 25,000,000.00			Original PA/Requirements Amount	\$ _____
Total Amt of Previous Amendments	\$ 0			Total Amt of Previous Amendments	\$ _____
Amount of Amendment	\$ 3,000,000.00			Amount of Amendment	\$ _____
Total Amount of Agreement	\$ 28,000,000.00			Total PA/Requirements Amount	\$ _____

REQUIRED SIGNATURES:

Department Manager

County Attorney

CPCA Manager

County Chair

Sheriff

Contract Administration

DATE

DATE

DATE

DATE

DATE

DATE

COMMENTS: (WBS: 6700RT6013D)

2003 OREGON TRANSPORTATION INVESTMENT ACT
Local Grant Agreement
Multnomah OTIA III Local Agency Bridges
Amendment No. 1

The State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "ODOT", and MULTNOMAH COUNTY, acting by and through its Board of Commissioners, hereinafter referred to as "Agency", entered into an Agreement on June 30, 2004. Said Agreement covers Multnomah County OTIA III Local Agency Bridge.

It has now been determined by ODOT and Agency that the Agreement referenced above, although remaining in full force and effect, shall be amended by this Agreement to extend the time, revise Exhibit A, and update language. Except as expressly amended below, all other terms and conditions of the Agreement, as previously amended, are still in full force and effect.

Paragraph 3 of Recitals, Page 1, which reads:

3. By the authority granted in ORS 190.110, 366.770 and 366.775 state agencies may enter into agreements with counties, cities, and units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

Shall be deleted in its entirety and amended to read:

3. By the authority granted in ORS 190.110, 366.572 and 366.576 state agencies may enter into agreements with counties, cities, and units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

Insert new Paragraph 5, Recitals, Page 1, to read as follows:

5. The Local Agency Bridge Selection Committee (LABSC) determined at its April 30, 2007 meeting that Agency will be eligible for an additional \$3,000,000 in Oregon Transportation Investment Act (OTIA) III funds for Bridge Number 02641 (Sauvie Island Road over Sauvie Island) conditioned upon the availability of additional funds from costs savings on other OTIA III bridge projects and approval by the Oregon Transportation Commission..

Paragraph 2 of Terms of Agreement, Page 2, which reads:

2. The total estimated cost of the Agency Project is \$33,808,000. The grant amount shall be limited to \$25,000,000. It is anticipated that any investment earnings

associated with investment of the grant proceeds plus the grant amount will not exceed the estimated cost of the Agency Project. Agency shall be responsible for all costs, including inflationary cost increases, in excess of grant amount and any investment earnings. Exhibit A identifies the estimated cost and grant share for each individual bridge project.

Shall be deleted in its entirety and amended to read:

2. The total estimated cost of the Agency Project is \$52,100,000. The grant amount shall be limited to \$25,000,000. It is anticipated that any investment earnings associated with investment of the grant proceeds plus the grant amount will not exceed the estimated cost of the Agency Project. Agency shall be responsible for all costs, including inflationary cost increases, in excess of grant amount and any investment earnings. Exhibit A1 identifies the estimated cost and grant share for each individual bridge project. Should additional funds become available, ODOT will increase OTIA III funds up to an amount not to exceed \$28,000,000 to cover the cost of replacing Bridge No. 02641 (Sauvie Island Bridge). Should additional funds be added, under no circumstances will the new total grant amount exceed of \$28,000,000.

Insert new Paragraph 3, Terms of Agreement, Page 2, to read as follows:

3. The ODOT Highway Finance Manager and the Chair of the Multnomah County Board of Commissioners identified in this Agreement shall have authority to add funds to the Agreement by amending the grant amount in the exhibit, signing and dating the Exhibit. Future amendments to the Exhibit A1 increasing the grant amount will be identified as Exhibit A2, Exhibit A3, etc. ODOT shall send a copy of each fully signed amended of the Exhibit to Agency and ODOT's Office of Procurement, Attention: Intergovernmental Agreements, 455 Airport Rd. SE Bldg. K, Salem OR 97301. Amendments to this Agreement, other than the grant amount, will require complete review and approval, and execution by the original signatories. Two OTIA III bridge projects with other agencies are in line to receive returned OTIA III funds prior to Multnomah County receiving additional funds. The Agencies are: Douglas County in the amount of \$2,195,000; and Clackamas County in the amount of \$3,235,149.

Paragraphs 3 and 4 of Terms of Agreement shall be re-numbered as Paragraphs 4 and 5.

Insert new Paragraph 6, Terms of Agreement, Page 2, to read as follows:

6. Agency understands that no additional OTIA III grant funds will be added to this Agreement until the following occur: a) OTC approves additional OTIA III grant funds to be used for this project if funds become available, and b) an amendment to this

Agreement, revising the attached Exhibit, is signed by all required parties to allow additional funds to be added to the project should they become available.

Paragraph 5 of ODOT Obligations, Page 3, which reads:

5. ODOT's Program Liaison for this Grant Agreement is: Local Government Section Manager, 355 Capitol Street NE, Room 222, Salem, OR 97301-3871; 503-986-2789.

Shall be deleted in its entirety and amended to read:

5. ODOT's Project Liaison for this Grant Agreement is ODOT's Highway Finance Manager; 355 Capitol Street NE, Room 212, Salem, OR 97301-3871; telephone 503.986.3880.

Insert new Paragraph 6, ODOT Obligations, Page 3, to read as follows:

6. ODOT shall submit a request to the Oregon Transportation Commission (OTC) to approve the addition of OTIA III grant funds in the amount of \$3,000,000 to be applied toward the Sauvie Island Bridge No. 02641, should additional funds become available.

Paragraph 5 of Agency Obligations, Page 4, which reads:

5. Agency agrees to comply with all Federal, State, and local laws, regulations, executive orders and ordinances applicable to the work under this agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which hereby are incorporated by reference.

Shall be deleted in its entirety and amended to read:

5. Agency agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, which hereby are incorporated by reference.

Insert new Paragraph 16, Agency Obligations, Page 9, to read as follows:

16. Agency's Project Liaison for this Agreement is Jon Henrichsen, Engineering Services Manager, Multnomah County, 1403 SE Water Avenue, Portland, OR 97214; or designee; telephone (503)988-3757; email jon.p.henrichsen@co.multnomah.or.us. Jon will obtain the signature of the Chair of the Multnomah County Board of Commissioners, or his designee on Exhibits to add funds. The Chair, or his designee, shall have full authority to sign Exhibits to this Agreement for the purpose of adding funds and no action will be required by the Multnomah County Board of Commissioners to add said funds.

Paragraph 6 of General Provisions, Page 7, which reads:

6. Agency shall maintain records of the Agency Project, including all payments made out of the Agency Project Fund. Agency acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

Shall be deleted in its entirety and amended to read:

6. Agency shall maintain records of the Agency Project, including all payments made out of the Agency Project Fund. Agency acknowledges and agrees that ODOT, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

EXHIBIT A shall be deleted in its entirety and hereby replaced with EXHIBIT A1, attached hereto and by this reference made a part hereof. All references to EXHIBIT A in the Agreement are hereby deleted and shall hereinafter be referred to as Exhibit A1.

This amendment 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 amendment so executed shall constitute an original.

Except as expressly amended above, all other terms and conditions of the Agreement are still in full force and effect. The Parties certify that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this amendment and with the same effect as though made at the time of this amendment.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year hereinafter written.

The Oregon Transportation Commission approved this Project on March 3, 2004.

Multnomah County/ODOT
Agreement No. 21,658
Amendment No. 1

The Oregon Transportation Commission on March 3, 2004 authorized the Director to approve and execute OTIA III agreements.

Signature Page to Follow

Multnomah County/ODOT
Agreement No. 21,658
Amendment No. 1

MULTNOMAH COUNTY, by and through its
Board of Commissioners

By PD Wheeler
Chair

By _____
Commissioner

By _____
Commissioner

Date 12-20-07

APPROVED AS TO LEGAL SUFFICIENCY

By Matthew O. Ryan
County Counsel Asst. County Attorney

Date 12/10/07

STATE OF OREGON, by and through
its Department of Transportation

By _____
Director

Date _____

APPROVAL RECOMMENDED

By _____
Darel Capps, Highway Finance Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date: _____

RETURN AGREEMENT TO AGENCY:

Cathey Kramer
Multnomah County Land Use and
Transportation
1620 SE 190th Ave
Portland, OR 97233

EXHIBIT A1

OTIA III BRIDGE PROJECT(S) DESCRIPTION
Multnomah County
Multnomah County OTIA III Local Agency Bridge

PROJECT DESCRIPTION(S)

Bridge

Numbers Descriptions

02641 Replace Bridge No. 02641 (Sauvie Island Road over Sauvie Island)

ESTIMATED PROJECT SCHEDULE

Bridge	Begin Preliminary	Begin R/W	Construction Contract	Construction Completion
<u>Number</u>	<u>Engineering</u>	<u>Acquisition</u>	<u>Award</u>	<u>Date</u>
02641	5/1/2003	7/1/2004	10/28/2005	2/28/2009

PROJECT COMPLETION DATE:

December 31, 2009

PROJECT COST ESTIMATE

Bridge	Preliminary	Right of Way		
<u>Number</u>	<u>Engineering</u>	<u>Acquisition</u>	<u>Construction</u>	<u>TOTAL</u>
02641	\$4,642,000	\$1,066,000	\$46,392,000	\$52,100,000

GRANT AMOUNT = \$52,100,000

**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: 8/20/07

SUBJECT: Children's Club

AGENDA NUMBER OR TOPIC: _____

FOR: X AGAINST: _____ THE ABOVE AGENDA ITEM

NAME: May Ann Schwab

ADDRESS: 605 SE 38

CITY/STATE/ZIP: Portland, OR

PHONE: _____

DAYS: (503) 236-3522

EVES: _____

EMAIL: e33schwab@qwest.net

FAX: _____

SPECIFIC ISSUE: fund raiser

WRITTEN TESTIMONY: see 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.

My name is Mary Ann Schwab, Civic Leader
Sunnyside Community Renovation Project Committee Member.

Good Morning Multnomah County Chair Wheeler and Commissioners:

This morning I would like to share a short article, from the Southeast Examiner,
December issue.

Christmas for the Children's Club
by Meredith Hendricks, my Sunnyside Neighbor

Are you already groaning over the upcoming holidays? Do you have the corporate shopping Christmas blues? If so, then read on. The Children's Club is here to help. Have you heard of the Children's Club. If not, then you've come to the right place.

The Children's Club is a non-profit daycare facility that serves the childcare needs of low income working families in Portland by offering flexible programs and a sliding scale fee. And yes, they are right here in our neighborhood at 3520 SE Yamhill.

The Children's Club is dire need of a few serious renovations...namely tile abatement. They recently discovered water damage in the flooring of their three basement classrooms which means replacement to the tune of \$10,000. Your Christmas cash could make a huge dent in their renovation project. They have managed to paint and spruce up much of the facility but would like to give the kids an enormous Christmas present, a new floor. If you would like to get involved by volunteering to install the new floor or just share some of your Christmas money please contact the Sunnyside Hotline @503.295.2699. Of if you'd like to send a donation check to Southeast Uplift, 3534 SE Main Street, Portland, Oregon 97214. Please make it payable to SE Uplift c/o Sunnyside Community Renovation Committee. Donations to charitable organizations make great Christmas presents and mean a lot more over the long haul than an IPOD or a new neck tie, so please make the effort.

A Hundred Years from Now

...it will not matter what my bank account was, the sort of house I lived in, or the kind of car I drove

...but the world may be different because I was important in the life of a CHILD.

1993 Kathy Davis

In closing, this message is not only for those of you in attendance but also for viewers at home in need of a last minute 2007 income tax deduction. I am here to ask you to consider helping the Children's Club with their expensive 9" tile abatement project. Why? This is one project community volunteers can not be asked to do. The lowest bid by 30% was for \$2.50 per square foot X 3,650 = \$9,125. Pending success with this fund raiser to cover the abatement cost, the Sunnyside Community Renovation Committee hopes finish the Children's Club tile project over the President's Day weekend. We remain grateful for your donations in any amount.



3520 S.E. Yamhill Street • Portland, Oregon 97214-0834 • (503) 233-2246

Mission, History and Goals: Founded in 1968, the Children's Club is a non-profit, child development and educational center dedicated to providing quality and affordable educational child care to low income and minority families in the Portland area. Located in SE Portland, we serve families throughout the metro area, and provide access to a broad network of resources and services for low-income, working parents. We believe that every child should have a safe, loving, quality environment in which to grow and learn while their parents work. Our goal is to help children develop social and emotional skills that are age-appropriate and essential for positive interaction with other children, school, family and the community. Through play and learning activities, and under the guidance of caring, professional and qualified staff who work hard for each child, our students learn to organize their environment and develop a sense of direction in their lives.

For many disadvantaged children, the ability to learn in a safe and nurturing environment is out of their family's financial reach. Youngsters from single-parent and low-resource families are often limited to educational childcare options that are non-developmentally appropriate. For many low-income parents who must work the early or late-shifts, their options are even more limited. For these reasons, the Children's Club is both affordable and accessible, open from 6:15am to 6:15pm so that children don't have to fend for themselves after school, become involved in non-healthy activities, or lose valuable opportunities to develop and learn. We strive to keep services affordable to families by operating a sliding tuition scale so that children from all economic backgrounds can learn and develop interests and strengths through a wide range of experiences. Roughly 70% of families served are at or below poverty income level, and 60% of the children come from single parent households.



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 12/20/07
Agenda Item #: R-1
Est. Start Time: 9:30 AM
Date Submitted: 11/28/07

Agenda Title: **RESOLUTION Approving Fire Code Ordinance 07-01 for Tualatin Valley Fire and Rescue, a Rural Fire Protection District and Repealing Resolution 99-150**

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

Requested Meeting Date: December 20, 2007 Amount of Time Needed: 5 mins
Department: Non-Departmental Division: County Attorney
Contact(s): Matthew O. Ryan
Phone: 503 988-3138 Ext. 83138 I/O Address: 503/500
Presenter(s): Eric T. McMullen, Tualatin Valley Fire Rescue

General Information

1. What action are you requesting from the Board?

Adopt Resolution Approving Fire Code Ordinance 07-01 for Tualatin Valley Fire and Rescue Rural Fire Protection District and Repealing Resolution 99-150.

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.

On July 15, 1999, by Resolution 99-150, the Board approved Fire Code Ordinance 99-01 for Tualatin Valley Fire and Rescue, a Rural Fire Protection District, (District). On July 24, 2007, pursuant to ORS Chapter 478, the District adopted a new Fire Code Ordinance 07-01. A portion of the District lies within the boundaries of Multnomah County.

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

N/A

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

ORS 478.924 requires that Multnomah County approve the new District Ordinance before it can be applied within the boundaries of Multnomah County. MCC Sections 29.001 to 29.013, the Building Code sub-chapter, provides for the preference of the County Code over the State specialty codes

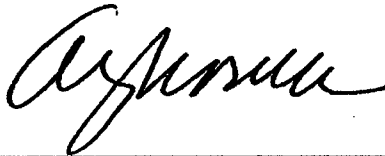
(including the fire code) to the extent there are differences. The County's Land Use Program recommends that MCC Chapter 29 be reviewed and updated as necessary in the near future to address any potential inconsistencies between the County and State fire codes. Nonetheless under ORS 478.924 upon adoption of this resolution, for the territory of the District within the boundaries of Multnomah County, the District's ordinance shall be the controlling authority.

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

The Tualatin Valley Fire and Rescue Rural Fire Protection District held hearings and ordinance readings on June 26, 2007 and July 24, 2007. Washington, Multnomah and Clackamas Counties will conduct public hearings on resolutions approving Fire Code Ordinance 07-01 for Tualatin Valley Fire and Rescue, a Rural Fire Protection District.

Required Signature

**Elected Official or
Department/
Agency Director:**



Date: 12/12/07

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Approving Fire Code Ordinance 07-01 for Tualatin Valley Fire and Rescue, a Rural Fire Protection District and Repealing Resolution 99-150

The Multnomah County Board of Commissioners Finds:

- a. On July 15, 1999, by Resolution 99-150, the Board approved Fire Code Ordinance 99-01 for Tualatin Valley Fire and Rescue, a Rural Fire Protection District, (District).
- b. On July 24, 2007, pursuant to ORS Chapter 478, the District adopted a new Fire Code Ordinance 07-01.
- c. A portion of the District lies within the boundaries of Multnomah County.
- d. ORS 478.924 requires that Multnomah County approve the new District Ordinance before it can be applied within the boundaries of Multnomah County.

The Multnomah County Board of Commissioners Resolves:

1. The Board approves the Fire Code Ordinance 07-01 for Tualatin Valley Fire and Rescue, a Rural Fire Protection District, attached as Exhibit A.
2. Resolution 99-150 is repealed.

ADOPTED this 20th day of December, 2007

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
Matthew O. Ryan, Assistant County Attorney

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

ORDINANCE 07-01

AN ORDINANCE ADOPTING FIRE CODES AND STANDARDS FOR TUALATIN VALLEY FIRE AND RESCUE A RURAL FIRE PROTECTION DISTRICT, PROVIDING A REASONABLE LEVEL OF LIFE SAFETY AND PROPERTY PROTECTION FROM THE HAZARDS OF FIRE, EXPLOSION OR DANGEROUS CONDITIONS IN NEW AND EXISTING BUILDINGS, STRUCTURES, AND PREMISES AND TO PROVIDE SAFETY TO FIREFIGHTERS AND EMERGENCY RESPONDERS DURING EMERGENCY OPERATIONS, AND REPEALING ORDINANCE 04-01.

WHEREAS, Tualatin Valley Fire & Rescue, A Rural Fire Protection District, has developed uniform fire regulations for the jurisdictions served; and,

WHEREAS, Tualatin Valley Fire and Rescue, A Rural Fire Protection District, hereinafter referred to as the District, finds it necessary to adopt regulations that establish a minimum level of fire safety, thus does hereby adopt the following regulations; and now, therefore;

IT IS ORDAINED AS FOLLOWS:

TITLE AND FILING:

This ordinance, including the codes hereby adopted, shall be filed in the record of the District and in the office of Washington, Multnomah, and Clackamas County Clerks and Oregon State Fire Marshal's office as prescribed by ORS 478.940. A copy shall be posted at each fire station within the District. From the date on which this ordinance shall take effect, provisions thereof shall be controlling within the territorial limits of the District and within each city and county within the District approving pursuant to ORS 478.924. The whole of this ordinance shall be known as the Fire Prevention Code and may be referred to as the Fire Code and shall be enforced by the Fire Marshal's Office created by Ordinance 91-02.

SCOPE:

The purpose of this code is to establish the minimum requirements consistent with nationally recognized good practice for providing a reasonable level of life safety and property protection from the hazards of fire, explosion, or dangerous conditions in new and existing buildings, structures, and premises and to provide safety to firefighters and emergency responders during emergency operations as authorized by ORS 478.910

SECTION I – ADOPTION OF THE 2007 OREGON FIRE CODE:

The following code is hereby adopted by the District for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion. Those certain codes and standards known as:

- A. The International Fire Code, 2006 Edition, as published and copyrighted by International Fire Code Council and as amended and adopted by the Oregon State Fire Marshal's Office and known as the 2007 Oregon Fire Code.

SECTION II – ENFORCEMENT OF CODE

Notwithstanding provisions in the Oregon Fire Code authorizing or requiring inspections of buildings and premises or testing of fire protection systems and equipment, e.g. Sections 106.2, 901.6 and 907.20.2 or provisions providing for enforcement of the Code, such inspections, testing and enforcement of the Code shall be discretionary by the Chief and other individuals charged by the Chief with such activities. The District recognizes that it has limited financial resources with which to provide fire, rescue and other services and functions and is forced to make public policy decisions as to allocation of District resources. Although the District places a high priority on prevention, inspection and maintenance of fire systems, due to financial limitations, it is the Board's policy to require inspections only so often as necessary to provide a reasonable level of fire and life safety. Accordingly, although the Fire Chief and other individuals charged by the Chief with these activities are encouraged to pursue them, performing such activities, as well as the scope and frequency of such activities, shall be within the discretion of the Fire Chief. It is the intention of the District to make clear that the District's duty to perform the inspections and testing, or to take enforcement actions, as set forth in the Code is limited to providing a reasonable level of fire and life safety. Such actions are discretionary.

SECTION III – AMENDMENTS MADE IN THE 2007 OREGON FIRE CODE:

The 2007 Oregon Fire Code is hereby adopted without amendments.

SECTION IV – PENALTIES

Any person who violates any of the provisions of these regulations hereby adopted or fails to comply therewith, or violates or fails to comply with any order made thereunder, or who builds in violation of any detailed statements, specification or plans submitted and approved thereunder and from which no appeal has been taken, or shall fail to comply with such an order as affirmed or modified by the Board of Appeals or by a court of competent jurisdiction within the time affixed herein, shall severally, for each and every such violation and non-compliance respectively, be guilty of a violation of the Fire Prevention Code as provided in ORS 478.930, punishable upon conviction as prescribed by ORS 478.990. All fines or punishments authorized upon conviction shall include the costs to the District to remedy the violation including costs of towing, storage, or removal of the hazard or obstruction if necessary.

The Chief or designated representative may bring a complaint in law or in equity to alleviate a violation of this ordinance as well as in addition to the rights to enforce said ordinance under the provisions of ORS 478.930 and ORS 478.990.

SECTION V – FIRE CODE BOARD OF APPEALS

As authorized by ORS 479.180, the District may establish a board of appeals. Such board of appeals may be implemented through bylaws and other procedures adopted by ordinance of the District. In the event that the Fire District Board adopts a board of appeals, the provisions of this ordinance, where appropriate, are subject to the board of appeals procedures.

SECTION VI – REPEAL OF CONFLICTING ORDINANCES

The provisions of this ordinance, i.e. the Fire Code, shall be controlling within the territorial limits of the District and within each city and county within the District approving pursuant to ORS 478.924. The existing fire code, Ordinance 04-01, has been approved within each city and county within the District. The District desires that the existing fire code continue in effect until such time as the cities and counties within the District have approved this new Fire Code pursuant to ORS 478.924. Accordingly, Ordinance 04-01, and all former ordinances or parts thereof, which are conflicting or inconsistent with the provisions of this ordinance or of the code or standards hereby adopted, are hereby repealed, effective the effective date of this ordinance; provided, however, that Ordinance 04-01 shall continue in effect in each city or county which has approved it until the city or county approves this Ordinance 07-01. Further, prosecutions or violations under repealed ordinances may continue after the effective date of this ordinance.

SECTION VII – VALIDITY

The District hereby declares that should any section, paragraph, sentence, or word of this ordinance or of the Codes or Standards hereby adopted be declared for any reason to be invalid, it is the intent of the District that it would have passed all other portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

SECTION VIII – DATE OF EFFECT

The Board of Directors of the Fire District finds and determines that it is necessary and expedient that the provisions of this ordinance become effective 30 days following adoption, as authorized by ORS 198.570.

First reading by Title only this 26th day of JUNE, 2007.

Second reading by Title only this 24th day of JULY, 2007.

PASSED by the District this 24th day of JULY, 2007.



PRESIDENT



SECRETARY-TREASURER

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 07-189

Approving Fire Code Ordinance 07-01 for Tualatin Valley Fire and Rescue, a Rural Fire Protection District and Repealing Resolution 99-150

The Multnomah County Board of Commissioners Finds:

- a. On July 15, 1999, by Resolution 99-150, the Board approved Fire Code Ordinance 99-01 for Tualatin Valley Fire and Rescue, a Rural Fire Protection District, (District).
- b. On July 24, 2007, pursuant to ORS Chapter 478, the District adopted a new Fire Code Ordinance 07-01.
- c. A portion of the District lies within the boundaries of Multnomah County.
- d. ORS 478.924 requires that Multnomah County approve the new District Ordinance before it can be applied within the boundaries of Multnomah County.

The Multnomah County Board of Commissioners Resolves:

1. The Board approves the Fire Code Ordinance 07-01 for Tualatin Valley Fire and Rescue, a Rural Fire Protection District, attached as Exhibit A.
2. Resolution 99-150 is repealed.

ADOPTED this 20th day of December, 2007



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Matthew O. Ryan, Assistant County Attorney

SUBMITTED BY:

M. Cecilia Johnson, Director, Dept of Community Services

ORDINANCE 07-01

AN ORDINANCE ADOPTING FIRE CODES AND STANDARDS FOR TUALATIN VALLEY FIRE AND RESCUE A RURAL FIRE PROTECTION DISTRICT, PROVIDING A REASONABLE LEVEL OF LIFE SAFETY AND PROPERTY PROTECTION FROM THE HAZARDS OF FIRE, EXPLOSION OR DANGEROUS CONDITIONS IN NEW AND EXISTING BUILDINGS, STRUCTURES, AND PREMISES AND TO PROVIDE SAFETY TO FIREFIGHTERS AND EMERGENCY RESPONDERS DURING EMERGENCY OPERATIONS, AND REPEALING ORDINANCE 04-01.

WHEREAS, Tualatin Valley Fire & Rescue, A Rural Fire Protection District, has developed uniform fire regulations for the jurisdictions served; and,

WHEREAS, Tualatin Valley Fire and Rescue, A Rural Fire Protection District, hereinafter referred to as the District, finds it necessary to adopt regulations that establish a minimum level of fire safety, thus does hereby adopt the following regulations; and now, therefore;

IT IS ORDAINED AS FOLLOWS:

TITLE AND FILING:

This ordinance, including the codes hereby adopted, shall be filed in the record of the District and in the office of Washington, Multnomah, and Clackamas County Clerks and Oregon State Fire Marshal's office as prescribed by ORS 478.940. A copy shall be posted at each fire station within the District. From the date on which this ordinance shall take effect, provisions thereof shall be controlling within the territorial limits of the District and within each city and county within the District approving pursuant to ORS 478.924. The whole of this ordinance shall be known as the Fire Prevention Code and may be referred to as the Fire Code and shall be enforced by the Fire Marshal's Office created by Ordinance 91-02.

SCOPE:

The purpose of this code is to establish the minimum requirements consistent with nationally recognized good practice for providing a reasonable level of life safety and property protection from the hazards of fire, explosion, or dangerous conditions in new and existing buildings, structures, and premises and to provide safety to firefighters and emergency responders during emergency operations as authorized by ORS 478.910

SECTION I – ADOPTION OF THE 2007 OREGON FIRE CODE:

The following code is hereby adopted by the District for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion. Those certain codes and standards known as:

- A. The International Fire Code, 2006 Edition, as published and copyrighted by International Fire Code Council and as amended and adopted by the Oregon State Fire Marshal's Office and known as the 2007 Oregon Fire Code.

SECTION II – ENFORCEMENT OF CODE

Notwithstanding provisions in the Oregon Fire Code authorizing or requiring inspections of buildings and premises or testing of fire protection systems and equipment, e.g. Sections 106.2, 901.6 and 907.20.2 or provisions providing for enforcement of the Code, such inspections, testing and enforcement of the Code shall be discretionary by the Chief and other individuals charged by the Chief with such activities. The District recognizes that it has limited financial resources with which to provide fire, rescue and other services and functions and is forced to make public policy decisions as to allocation of District resources. Although the District places a high priority on prevention, inspection and maintenance of fire systems, due to financial limitations, it is the Board's policy to require inspections only so often as necessary to provide a reasonable level of fire and life safety. Accordingly, although the Fire Chief and other individuals charged by the Chief with these activities are encouraged to pursue them, performing such activities, as well as the scope and frequency of such activities, shall be within the discretion of the Fire Chief. It is the intention of the District to make clear that the District's duty to perform the inspections and testing, or to take enforcement actions, as set forth in the Code is limited to providing a reasonable level of fire and life safety. Such actions are discretionary.

SECTION III – AMENDMENTS MADE IN THE 2007 OREGON FIRE CODE:

The 2007 Oregon Fire Code is hereby adopted without amendments.

SECTION IV – PENALTIES

Any person who violates any of the provisions of these regulations hereby adopted or fails to comply therewith, or violates or fails to comply with any order made thereunder, or who builds in violation of any detailed statements, specification or plans submitted and approved thereunder and from which no appeal has been taken, or shall fail to comply with such an order as affirmed or modified by the Board of Appeals or by a court of competent jurisdiction within the time affixed herein, shall severally, for each and every such violation and non-compliance respectively, be guilty of a violation of the Fire Prevention Code as provided in ORS 478.930, punishable upon conviction as prescribed by ORS 478.990. All fines or punishments authorized upon conviction shall include the costs to the District to remedy the violation including costs of towing, storage, or removal of the hazard or obstruction if necessary.

The Chief or designated representative may bring a complaint in law or in equity to alleviate a violation of this ordinance as well as in addition to the rights to enforce said ordinance under the provisions of ORS 478.930 and ORS 478.990.

SECTION V – FIRE CODE BOARD OF APPEALS

As authorized by ORS 479.180, the District may establish a board of appeals. Such board of appeals may be implemented through bylaws and other procedures adopted by ordinance of the District. In the event that the Fire District Board adopts a board of appeals, the provisions of this ordinance, where appropriate, are subject to the board of appeals procedures.

SECTION VI – REPEAL OF CONFLICTING ORDINANCES

The provisions of this ordinance, i.e. the Fire Code, shall be controlling within the territorial limits of the District and within each city and county within the District approving pursuant to ORS 478.924. The existing fire code, Ordinance 04-01, has been approved within each city and county within the District. The District desires that the existing fire code continue in effect until such time as the cities and counties within the District have approved this new Fire Code pursuant to ORS 478.924. Accordingly, Ordinance 04-01, and all former ordinances or parts thereof, which are conflicting or inconsistent with the provisions of this ordinance or of the code or standards hereby adopted, are hereby repealed, effective the effective date of this ordinance; provided, however, that Ordinance 04-01 shall continue in effect in each city or county which has approved it until the city or county approves this Ordinance 07-01. Further, prosecutions or violations under repealed ordinances may continue after the effective date of this ordinance.

SECTION VII – VALIDITY

The District hereby declares that should any section, paragraph, sentence, or word of this ordinance or of the Codes or Standards hereby adopted be declared for any reason to be invalid, it is the intent of the District that it would have passed all other portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

SECTION VIII – DATE OF EFFECT

The Board of Directors of the Fire District finds and determines that it is necessary and expedient that the provisions of this ordinance become effective 30 days following adoption, as authorized by ORS 198.570.

First reading by Title only this 26th day of JUNE, 2007.

Second reading by Title only this 24th day of JULY, 2007.

PASSED by the District this 24th day of JULY, 2007.



PRESIDENT



SECRETARY-TREASURER

Fire Code Ordinance 07-01 Q&A

Q: Why do we need to adopt a new fire code ordinance, what's wrong with the existing one?

A: Nothing is wrong, per say, with our current fire code ordinance. The International Code Council develops and publishes a new edition of the International Fire Code every three years. The Oregon Office of State Fire Marshal subsequently adopts a new fire code for the State of Oregon on the same three year cycle, in this case effective April 1, 2007. In order to maintain our exempt jurisdiction status, we are required by OAR 837-039-0015 to adopt regulations that are consistent with minimum state fire code standards.

Q: What is "Exempt Status?"

A: TVF&R is an Exempt jurisdiction as per OAR 837, Division 39. This means that in the opinion of the State Fire Marshal, we have enacted adequate regulations generally conforming to state and national standards concerning fire prevention, fire safety measures, and building construction requirements for safety, and we provide reasonable enforcement of those regulations.

The significant benefit to being an exempt jurisdiction is the power to adopt and administer a local fire code appeals process. Administering our own local board of appeals precludes an appellant from seeking a second opinion from the Office of State Fire Marshal if they are dissatisfied with the outcome of an appeal. In non-exempt jurisdictions, and appellant can bypass a local appeals process and appeal directly to the Office of State Fire Marshal. Appellants not satisfied with the local appeals process administered by an exempt jurisdiction must seek further remedy through civil court proceedings. There are currently nine exempt jurisdictions in Oregon.

Q: Why do we have to adopt a fire code ordinance at all?

A: The simple answer is "We don't." Nothing in OAR 837, Division 39 requires a local governmental subdivision to adopt a fire code. If we choose not to adopt a local fire code ordinance, we can still be exempt, but lose our power to administer a local fire code appeals process. If we chose not to adopt a local fire code ordinance, the 2007 Oregon Fire Code, as adopted by the Office of State Fire Marshal would apply in TVF&R's jurisdiction by default.

Q: Why don't we have any local TVF&R amendments?

A: The trend, based on a Governor's mandate, over the past few code adoption cycles has been to reduce state and local amendments in the interest of consistency and uniformity. Since 1999, the TVF&R Fire Marshal's Office has worked diligently to reduce the number of local amendments. Ordinance 99-01 had 78 TVF&R amendments to the state fire code; Ordinance 04-01 had three TVF&R amendments to the state fire code. The proposal you have in front of you, Ordinance 07-01, contains zero TVF&R amendments to the state fire code.

Along with the trend to reduce amendments has been the use of local policies that clarify the code with regard to TVF&R's specific needs. These policies are developed through a collaborative effort with 16 other metro area jurisdictions in order to promote uniformity of application. The Metro Fire Code Policy Guide is currently being used in over 60 jurisdictions statewide.

Q: Wouldn't it be easier to adopt our fire code by resolution?

A: Yes, it would. However, ORS 478.910 requires a district board to adopt their fire prevention code in accordance with ORS 198.510 to 198.600. The ORS 198 provisions require adoption by ordinance and require two separate readings for other than emergency adoptions. Following adoption by TVF&R's Board, ORS 478.924 further mandates the provisions of a fire prevention code adopted by a district shall not apply within any city or county within the district unless the governing body of the city or county approves the fire code by resolution.



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 12/20/07
Agenda Item #: R-2
Est. Start Time: 9:35 AM
Date Submitted: 12/12/07

Agenda Title: **RESOLUTION Creating a Joint City-County Taskforce to Study Options for Providing Animal Services in the City of Portland**

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

Requested Meeting Date: December 20, 2007 Amount of Time Needed: 15 minutes
Department: Non-Departmental Division: County Chair's Office
Contact(s): Johnell Bell, Mike Oswald
Phone: 503-988-3308 Ext. 83308 I/O Address: 503/600
Presenter(s): Chair Ted Wheeler and Portland Commissioner Randy Leonard

General Information

1. What action are you requesting from the Board?

Request approval of a resolution to create a joint City of Portland-Multnomah County Animal Services Taskforce

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 Portland contracts with Multnomah County, through an Intergovernmental Agreement, to provide animal services to the City. The County has not been able to fund the level of animal services in the city that meets the growing expectations and demands from the citizens of Portland. The City Council and the Multnomah County Board of Commissioners are committed to ensuring that the health, safety and welfare of the citizens of Portland, and their pets, are protected through adequately funded animal services. This resolution will create a joint committee of city staff, county staff, and community partners to study feasible options for providing animal services in the city that protects the health, safety, and welfare of its citizens, protects pets, promotes neighborhood livability, and establishes a sustainable funding strategy.

The outcomes of the joint city-county taskforce will impact three Program Offers: #91001 – Animal

Services Client Services; #91002 – Animal Services Field Services; #91003 – Animal Services Shelter Operations.

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

The Joint city-county taskforce will be asked to identify funding strategies to improve services levels. Any new funding sources may impact program offers.

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

Currently, the city contracts with the county for animal services through an Intergovernmental Agreement (IGA). Any changes in services and/or funding that are adopted by the city and the county as a result of taskforce recommendations would require an amendment to the IGA.

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

The proposed joint city-county taskforce will include representatives from City of Portland bureaus, offices of City and County Commissioners, the County Chair's office and County departments. In addition, the joint taskforce will include community members, animal-related organizations, neighborhood association, the veterinary community, and labor.

Required Signature

Elected Official or
Department/
Agency Director:



Date: 12/12/07

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Creating a Joint City-County Taskforce to Study Options for Providing Animal Services in the City of Portland

The Multnomah County Board of Commissioners Finds:

- a. The City of Portland contracts with Multnomah County, through an Intergovernmental Agreement, to provide animal services to the City.
- b. Multnomah County can no longer fund the level of animal services in the city that meets the growing expectations and demands from the citizens of Portland.
- c. The Portland City Council and the Multnomah County Board of Commissioners are committed to working together to provide adequately funded animal services within the City.

The Multnomah County Board of Commissioners Resolves:

1. The Board directs the County Animal Services Division to convene a joint committee with the Portland Bureau of Development, as determined by the County and City, to study feasible options for providing animal services in the city that protects the health, safety, and welfare of its citizens, and promote neighborhood livability.
2. For purposes of the feasibility study, if the City of Portland assumes animal control enforcement within the city, then all pet licensing fees collected within the city will be retained by the city for its animal control program.
3. The joint city-county taskforce shall report its findings to the Board no later than November 30, 2008.

ADOPTED this 20th day of December 2007.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
Jenny M. Morf, Assistant County Attorney

SUBMITTED BY:
Ted Wheeler, County Chair

Talking Points Animal Services Joint Taskforce

- Thank you Commissioner Leonard for working with me on this very important issue.
 - This is a great example of Multnomah County and the City of Portland coming together to work on an issues that affects our broader community. I'm committed to finding solutions to animal services provided in the City of Portland---and I'm grateful you've come to us with an opportunity to showcase that support.
- I want to talk a little bit about what this resolution will do:
 - Will create a joint-committee of city staff, county staff, and community partners to study feasible options for providing animal services in the city that protects the health, safety, and welfare of its citizens; protects pets; promotes neighborhood livability; and establishes a sustainable funding strategy.
- We will not be reinventing the wheel
 - The taskforce will review the 2000 Citizen Taskforce Report, the 2000 National Animal Control Association Assessment, and the 2001 County Auditor's Report to come up with solid recommendations.
 - Those recommendations will be feasible and prioritized.
 - They will also include recommendations on how to fund the priorities identified.
 - The proposed taskforce will meet for up to six-months to develop these recommendations for the City Council and the Board of County Commissioners by November of 2008.
- I'm excited to be working on this with my colleague from the City and I ask for your support to get this ball rolling.
- Thank you

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 07-190

Creating a Joint City-County Taskforce to Study Options for Providing Animal Services in the City of Portland

The Multnomah County Board of Commissioners Finds:

- a. The City of Portland contracts with Multnomah County, through an Intergovernmental Agreement, to provide animal services to the City.
- b. Multnomah County can no longer fund the level of animal services in the city that meets the growing expectations and demands from the citizens of Portland.
- c. The Portland City Council and the Multnomah County Board of Commissioners are committed to working together to provide adequately funded animal services within the City.

The Multnomah County Board of Commissioners Resolves:

1. The Board directs the County Animal Services Division to convene a joint committee with the Portland Bureau of Development, as determined by the County and City, to study feasible options for providing animal services in the city that protects the health, safety, and welfare of its citizens, and promote neighborhood livability.
2. For purposes of the feasibility study, if the City of Portland assumes animal control enforcement within the city, then all pet licensing fees collected within the city will be retained by the city for its animal control program.
3. The joint city-county taskforce shall report its findings to the Board no later than November 30, 2008.

ADOPTED this 20th day of December 2007.




BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By


Jenny M. Morf, Assistant County Attorney

SUBMITTED BY:

Ted Wheeler, County Chair



MULTNOMAH COUNTY

AGENDA PLACEMENT REQUEST (long form)

Board Clerk Use Only

Meeting Date: 12/20/07
Agenda Item #: R-3
Est. Start Time: 9:50 AM
Date Submitted: 12/11/07

BUDGET MODIFICATION: NOND - 04

Agenda Title: Citizen Involvement Work Group Update and Budget Modification NOND-04
Transferring \$50,000 from Contingency to the Citizen Involvement Committee
for 1.0 FTE to Assist with Enhanced Citizen Involvement

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

Requested Meeting Date: December 20, 2007 Amount of Time Needed: 10 -15 Minutes
Department: Non Departmental Division: Citizen Involvement
Contact(s): Kathleen Todd
Phone: 503-988-3450 Ext. 22438 I/O Address: 503/6
Presenter(s): Jessica Hamilton and Members of the Citizen Involvement Work Group

General Information

1. What action are you requesting from the Board?

Approval of Non-Departmental budget modification 04, releasing \$50,000 of General Fund contingency to the Citizen Involvement Committee (CIC) for 1.0 FTE to assist with enhanced citizen involvement.

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.

In response to Chair Wheeler's citizen involvement initiative, the Citizen Involvement Committee convened a 15 member citizen involvement working group made up of key stakeholders in County Citizen Involvement around policy decisions. The goal of the Citizen Involvement Work Group (CIWG) Plan is to significantly improve the County's citizen involvement processes. The staff and the citizen members of the CIWG have devoted a great deal of energy and effort to this planning process in addition to their respective workloads, holding focus groups, creating and conducting surveys, researching best practices and identifying past recommendations and operational gaps.

The framework of the resulting plan encompasses two objectives: 1) to make citizens aware of policy input opportunities and to obtain their active participation and 2) to obtain, use and value citizen input in policy development efforts. The plan for implementing these objectives is visionary and ambitious and will be implemented in two phases. The release of these contingency funds will provide the resources called for in phase one of the plan to strengthen the infrastructure and lay the groundwork for improving the citizen involvement process for not only county citizens but county staff, as well as cover costs already incurred by this project such as translation of a public survey. This action affects Program Offer 10008A in the current budget cycle.

Phase one includes the continuation of the Citizen Involvement Work Group; restoring the staffing level in the Office of Citizen Involvement; reopening the Office of Citizen Involvement to the public so that citizens may have immediate and easy access to volunteer opportunities and Office resources; creating a centralized and current data base of volunteers as well as interested citizens which will allow for the prompt dissemination of information and opportunities; providing for an up-to-date Web presence for volunteer opportunities; enhanced training and support for the CBAC Program as the new budget process for FY 08/09 is implemented as well as increased outreach to the community through a traveling show.

Under consideration for phase two by the Citizen Involvement Work Group is the need to develop procedures for identifying and sharing information about new policy initiatives, current policy efforts, etc.; as well as to develop a citizen training program (County 101) and a departmental training program on how to effectively recruit and use citizen input, along with suggestions for how to provide feedback to citizens on recommendations and advice, and the continuation of the Citizen Involvement Work Group.

The recommendations that are formulated through this planning process will be reflected in the next budget cycle as citizen awareness of and participation in decision making around county programs, county policies, and constraints and opportunities faced by county government are greatly enhanced by an active energetic citizen involvement effort.

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

The Citizen Involvement Committee's budget will be increased by \$50,000 and the General Fund contingency will be reduced by a like amount. It is anticipated that this request will be included in the CIC's FY 2009 budget request.

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.

An actively inclusive planning process to improve citizen involvement in the county for both citizens and county staff is in place. An ongoing citizen involvement work group has been convened. Members include representatives from each Commissioner's offices, the Department heads, the Public Affairs Office, the Executive Committee of the Citizen Involvement Committee, the Office of Citizen Involvement, and the Chair's Office. The Central Citizen's Budget Advisory Committee, the Non Departmental Citizen's Budget Advisory Committee, and the Citizen Involvement Committee have provided suggestions and examples of how to improve citizen involvement in the county. Focus groups of citizens who have no experience with county government as well as citizens who have past or present experience in county policy roles have been held and surveys have been deployed. Additional citizen involvement activities will occur as we move forward on this project.

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?

The Citizen Involvement Committee's budget will be increased by \$50,000 and the General Fund contingency will be reduced by a like amount.

- What do the changes accomplish?

The increase to the CIC's budget will allow the office to restore staffing levels by hiring a full-time employee, and to cover additional costs generated by the current Work Group planning process.

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

Yes. This action adds 1.0 FTE Staff Assistant position to the Citizen Involvement Committee's staff office.

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

The CIC is a General Fund organization not subject to indirect costs. Other administrative functions will be minimal and can be absorbed within current resources.

- 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?

This expenditure was included in the annual budget process; the outcome of that process was to place it in contingency.

- What efforts have been made to identify funds from other sources within the Department/Agency to cover this expenditure?

No other sources were identified.

- Why are no other department/agency fund sources available?

N/A

- 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?

This is a General Fund expense that is anticipated to increase the quantity and quality of citizen involvement activities in the County. The CIC expects to include this amount in its FY 2009 budget request.

- **Has this request been made before? When? What was the outcome?**

No funding for this purpose has been requested from contingency before. However, staffing levels in the Office of Citizen Involvement were decreased in the FY 05/06 budget to 1FTE and unsuccessful requests for restored staffing levels were made during the last two funding cycles. It should be noted that these requests were made without the actively inclusive citizen involvement work group planning process that is now in place.

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: NOND-04

Required Signatures

**Elected Official
or Department/
Agency
Director:**



Date: 11/19/2007

Budget Analyst:



Date: 12/11/07

Department HR:



Date: 12/12/07



Department of County Management
MULTNOMAH COUNTY OREGON
Budget Office

501 SE Hawthorne Blvd., Suite 531
Portland, Oregon 97214
(503) 988-3312 phone
(503) 988-5758 fax
(503) 988-5170 TDD

TO: Board of County Commissioners

FROM: Julie Neburka, Principal Budget Analyst

DATE: November 26, 2007

SUBJECT: General Fund Contingency Request for \$50,000 to fund 1.0 FTE in the Office of Citizen Involvement. (Budget Modification NOND-04).

The Citizen Involvement Committee requests \$50,000 from the General Fund contingency to pay for 1.0 FTE Staff Assistant in order to provide the County with enhanced citizen involvement services.

In response to Chair Wheeler's citizen involvement initiative, the Citizen Involvement Committee convened a 15 member citizen involvement working group whose task was to significantly improve the County's citizen involvement processes. One recommendation of this group is to add an additional staff member to the Office of Citizen Involvement, which will allow for both a more comprehensive and complete planning process for the improvement of county citizen involvement; and for fully-staffed regular business hours for the Office of Citizen Involvement.

General Fund Contingency Policy Compliance

The Budget Office is required to inform the Board if contingency requests submitted for approval satisfy the general guidelines and policies for using the General Fund Contingency. The request is consistent with County Policy Criteria #3 as it was addressed in the Board's Budget Notes.

- Criteria 1 States contingency requests should be for one-time-only purposes. This request is not one time only and requires funding in the future.
- Criteria 2 Addresses emergencies and unanticipated situations. This request is not an emergency, and does not address an unanticipated situation.
- Criteria 3 Addresses items identified in Board Budget Notes. *This item was identified in a budget note, the text of which reads, in part: "A Task Force led by the Citizen Involvement Committee and the Chair's Office will develop a plan to improve the County's citizen involvement processes. Key stakeholders in the County and community such as the Commission on Children, Families, and the Community will serve as resources to an implementation team to ensure integration of citizen involvement activities across the County. The Task Force will consider the recommendations from the December, 2006, report of the Citizen Involvement Task Force. Following completion of the plan, the Task Force may approach the Board will a funding request of up to \$50,000 to help implement the recommendations."*

Budget Modification ID: **Nond 04****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: 2008

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						
1	10-40	1000	10008A	20		104000	60000	54,268	82,268	28,000		Add base pay for 1.0 FTE
2	10-40	1000	10008A	20		104000	60130	17,415	25,557	8,142		Increase fringe
3	10-40	1000	10008A	20		104000	60140	13,261	24,985	11,724		Increase insurance
4	10-40	1000	10008A	20		104000	60240	10,046	12,180	2,134		increase supplies
5												
6	19	1000		20		9500001000	60470		(50,000)	(50,000)		Decrease GF contingency
7									0			
8	72-10	3500		20		705210	50316		(11,724)	(11,724)		Increase Insurance SR
9	72-10	3500		20		705210	60330		11,724	11,724		Increase Insurance SR
10									0			
11									0			
12									0			
13									0			
14									0			
15									0			
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 CHANGEChange 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	9400		104000	Staff Assistant	N/A	1.00	28,000	8,142	11,724	47,866
										0
										0
										0
										0
										0
										0
										0
										0
										0
										0
										0
										0
										0
										0
										0
TOTAL ANNUALIZED CHANGES						1.00	28,000	8,142	11,724	47,866

CURRENT YEAR PERSONNEL DOLLAR CHANGECalculate 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	9400		104000	Staff Assistant	N/A	1.00	28,000	8,142	11,724	47,866
										0
										0
										0
										0
										0
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										0
										0
										0
										0
										0
TOTAL CURRENT FY CHANGES						1.00	28,000	8,142	11,724	47,866

Strategy Worksheet

Objective (Phase II):	<ul style="list-style-type: none"> To obtain, use and value citizen input into policy development efforts
Actions and Outcomes (Phase II):	
<ul style="list-style-type: none"> Develop procedures for identifying and sharing info about new policy initiatives, current policy efforts, etc. 	<ul style="list-style-type: none"> Emerging policy topics are identified and examined for suitability for effective citizen involvement in policy development
<ul style="list-style-type: none"> Develop procedures for identifying and sharing info about new policy initiatives, current policy efforts, etc. Monitor the public reporting of policy development efforts 	<ul style="list-style-type: none"> CIVG functions as communication link for citizen involvement opportunities and efforts
<ul style="list-style-type: none"> Develop a customization process Customize the citizen involvement process to specific policy development efforts 	<p>CIC and OCI work with electeds and departmental staff to customize citizen involvement process for each policy and program development opportunity</p>
<ul style="list-style-type: none"> Hold appreciation events Monitor the public reporting of policy development efforts Operate citizen training program on ongoing basis 	<ul style="list-style-type: none"> Citizens involved in policy input opportunities feel their efforts are productive and are valued by the county.
<ul style="list-style-type: none"> Monitor the public reporting of policy development efforts Operate departmental training program on ongoing basis 	<p>County electeds and departments feel that citizen involvement and input generates useful information and ideas</p>
<ul style="list-style-type: none"> Develop procedures for identifying and sharing info about new policy initiatives, current policy efforts, etc. Customize the citizen involvement process to specific policy development efforts Monitor the public reporting of policy development efforts 	<ul style="list-style-type: none"> Public policy development efforts include a clearly defined citizen involvement process that is developed and publicized early in the effort.
<ul style="list-style-type: none"> Develop model process for citizen involvement in policy development. Develop departmental training program Pilot departmental training program Deploy departmental training program countywide 	<ul style="list-style-type: none"> CIC and OCI operate a training program for departments on how to effectively recruit and use citizen input.
<ul style="list-style-type: none"> Develop model process for citizen involvement in policy development Develop citizen training program Pilot citizen training program Deploy citizen training program county-wide 	<ul style="list-style-type: none"> CIC and OCI, along with departments, operate a joint training and orientation program for newly recruited citizens.

Strategy Worksheet

Objective (Phase II):	<ul style="list-style-type: none"> To make citizens aware of policy input opportunities and to obtain their active participation
Actions and Outcomes (Phase II):	
<ul style="list-style-type: none"> Develop data acquisition procedures for the database Develop citizen access pathways to the database 	<ul style="list-style-type: none"> Citizen access to current involvement opportunities is easy and simple OCI serves as central information & referral access point for citizens seeking participation opportunities
<ul style="list-style-type: none"> Develop model process for citizen involvement in policy development Pilot model process Deploy model process county-wide Develop a customization process Customize the citizen involvement process to specific policy development efforts 	<p>Public policy development efforts include a clearly defined citizen involvement process that is developed and publicized early in the effort.</p>
<ul style="list-style-type: none"> Develop model process for citizen involvement in policy development. Develop departmental training program Pilot departmental training program Deploy departmental training program county-wide 	<p>CIC and OCI operate a training program for departments on how to effectively recruit and use citizen input.</p>
<ul style="list-style-type: none"> Develop model process for citizen involvement in policy development Develop citizen training program Pilot citizen training program Deploy citizen training program county-wide 	<p>CIC and OCI, along with departments, operate a joint training and orientation program for newly recruited citizens.</p>
<p style="text-align: center;">PHASE II Actions and Outcomes are still under development</p>	

Strategy Worksheet

County Goal:	Accountability/Transparency
Board Priority:	Improve citizen involvement processes

Strategy:	Institutionalize citizen input as part of policy and program	
Objective (Phase I):	• To make citizens aware of policy input opportunities and to obtain their active participation	
Actions and Outcomes (Phase I):		
• Restore OCI staffing level		• Citizen access to current involvement opportunities is easy and simple. • OCI serves as central information & referral access point for citizens seeking participation opportunities • Traveling roadshow provides community outreach regarding county volunteer service opportunities
• Open OCI to the public		
• Develop web site pages that report on policy and program development efforts and volunteer opportunities		
• Develop and implement information policy opportunity database		
• Develop data acquisition procedures for the database		
• Create community outreach roadshow to service opportunities.		
Objective (Phase I):	• To obtain, use and value citizen input into policy development efforts	
Actions and Outcomes (Phase I):		
• Continue CIWG planning and vision sessions		• Phase II action plans are developed
• Create and implement CBAC budget training program.		• CBAC volunteers are trained in the new budget process.
• Create community outreach roadshow on budget process.		• Traveling roadshow provides community outreach regarding new budget process

December 14, 2007

From: Kathleen Todd, Executive Director
Office of Citizen Involvement Multnomah County

Subject: Scope of Office of Citizen Involvement Effort

An important part of understanding the need for the replacement staff person in the Office of Citizen Involvement (OCI) is grasping the scope of current and potential work effort carried out by the OCI. The following lists summarize ongoing tasks that are at present discharged by the OCI, and other tasks that have been put on hold because of the limited staff resource in OCI.

It should be understood that many of the ongoing tasks do not receive the depth of attention they deserve because of the need to spread staff effort across as broad a reach of the tasks list as possible. The alternative would have been to leave even more tasks unsupported in order to concentrate on a smaller task list; this would have the result of shutting down large portions of the citizen involvement process. It was deemed the better choice to keep as much of the total citizen involvement process operating as possible, even if at reduced speed and intensity.

On Going Tasks

Program Operations

Information and Referral

Provide complete staff support to:

Staff CCBAC

Staff CIC

Staff Exco

Staff Nd CBAC

Manage and Produce annual county volunteer awards ceremony

Coordinate CBAC Program

Budget development

Budget performance tracking

CCBAC Proactive Project

Draft committee reports/press releases/etc.

Publish committee reports/CBAC Reports/other citizen committee reports/debriefs

Correspondence internal and external

Prepare Board agenda materials/testimony etc.

Provide policy advice to the CIC

Carryout directives of the CIC

Schedule and provide support to CIC Departmental Reviews

Work with county government to implement good citizen involvement practices

Attend meetings for CIC/OCI

Present to the BCC

Monitor BCC agenda/meetings and provide briefings to CIC/CCBAC

Program Development and Planning

Manages and produce CIC Retreat
CIWG

Community Relations

Manage production of focus groups/workshops at the request of the CIC
Public Safety Forums
Recognition process for NA's/Community Groups in Multnomah County
Produce and coordinate annual dinner (recognition event for CIC partners and volunteers)
Meet with concerned citizens (reactive)

Intergovernmental Relations

Liaison to Board & Commissions (reactive)
Liaison to Volunteer Coordinators
Represent CIC/OCI at agency meetings
Diversity outreach training (city & county)
Liaison with Portland ONI
Liaison with Clackamas County
Liaison with NA/community groups in unincorporated areas
Liaison with Gresham/Fairview/etc re: citizen involvement
Liaison to County Budget Office
Liaison to Volunteer Coordinators
Brief county entities on citizen concerns/emerging issues/etc.

Volunteer Recruitment and Management

Track cbac membership
CBAC recruiting and nominations
Recruit & Screen CIC member candidates
Organize CIC and CBAC training
Provide support to volunteers already involved in county government
Sustain, and keep engaged current volunteers

Office Management

Financial records and maintenance
Payroll
Payables
Receivables
Purchasing
Office equipment
Telephone reception
Updating office procedures

Tasks on Hold

Program Operations

Dedicated Fund Review

Visit CBAC Meetings

Updating publications (Handbooks)

Program Development and Planning

Volunteer database

Community Outreach

Proactive liaison to Boards & Commissions

Strategic Planning

CIC –instigated projects (Bylaws update, traveling show, etc.)

Community Relations

Conduit –edit and publish

Web page maintenance

Intergovernmental Relations

Grant applications

Revamp training programs

Professional Development

Review of this scope of effort summary leads to the inescapable conclusion that it constitutes a very full work load for two staff members.



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 12/20/07
Agenda Item #: R-4
Est. Start Time: 10:05 AM
Date Submitted: 12/12/07

Agenda Title: **RESOLUTION Appointing the Chair and Members of the Permanent Work Group to Advise the County Commission on Jail Policies and Procedures for a Term of One Year, Commencing on December 21, 2007**

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

Requested Meeting Date: December 20, 2007 Amount of Time Needed: 5 minutes
Department: Non-Departmental Division: Commissioner Lisa Naito
Contact(s): Matthew Lieuallen
Phone: 503 988-5217 Ext. 85274 I/O Address: 503/600
Presenter(s): Commissioner Lisa Naito

General Information

1. What action are you requesting from the Board?

Approval of RESOLUTION re-appointing the Chair and Members of the Permanent Work Group to Advise the County Commission on Jail Policies and Procedures for a Term of One Year, commencing on December 21, 2007

2. Please provide sufficient background information for the Board and the public to understand this issue.

This resolution accompanies the resolution, "Accepting the *Review of Policies and Procedures of Correctional Facilities Operated by the Multnomah County Sheriff's Office* by the Multnomah County District Attorney's Office and Creating a Permanent Work To Advise the County Commission on Jail Policies and Procedures." The first resolution establishes the Work Group, and this accompanying resolution re-appoints the members and chair of the Work Group.

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

None

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

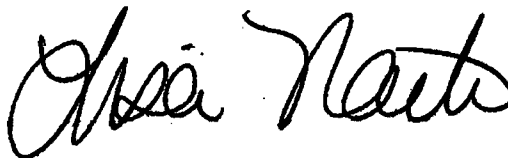
None

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

Re-assigned group will include citizen members and non-County government representatives.

Required Signature

**Elected Official or
Department/
Agency Director:**

A handwritten signature in black ink, appearing to read "Lisa Nault", is written over a horizontal line.

Date: 12/12/07

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Appointing the Chair and Members of the Permanent Work Group to Advise the County Commission on Jail Policies and Procedures for a Term of One Year, Commencing on December 21, 2007

The Multnomah County Board of Commissioners Finds:

- a. On November 30, 2006, by Resolution 06-197, the Board established a Permanent Work Group to advise the county commission on jail policies and procedures.
- b. A chair and members of this committee were appointed for a one year term commencing on December 1, 2006, and appointments need to be made for the next term.

The Multnomah County Board of Commissioners Resolves:

1. The Board appoints the following citizens of Multnomah County to the Permanent Work Group To Advise the County Commission on Jail Policies and Procedures for a term of one year, commencing on December 21, 2007:
 - a) Phil Anderchuk, Sergeant, Multnomah County Sheriff's Office; President, Multnomah County Corrections Deputies Association;
 - b) Rod Beard, Assistant Chief, Portland Police Bureau;
 - c) Jimmy Brown, Public Information and Community Outreach Manager, Portland Water Bureau; former Inter-Cultural Communications Manager, Department of Community Justice, Multnomah County;
 - d) Charles Daniels, Warden, Federal Correctional Institution Sheridan;
 - e) Chris Hoy, former Corrections Commander, Marion County;
 - f) Karin Immergut, U. S. Attorney for the District of Oregon;
 - g) Dick Inukai, President, Dick's Country Dodge/Dick's MacKenzie Ford; Chair, Boys & Girls Club; Member, Board of Directors, Citizens Crime Commission;
 - h) Chair Ted Wheeler, Multnomah County;
 - i) Sandra McDonough, President and CEO, Portland Business Alliance;
 - j) Commissioner Jeff Cogen, Multnomah County;
 - k) Carla Piluso, Chief, Gresham Police Department;
 - l) David Rogers, Executive Director, Partnership for Safety and Justice;

- m) District Attorney Michael D. Schrunk, Multnomah County;
 - n) Dave Shields, former City of Gresham Councilor; Director, Mt. Hood Community College District Board of Education;
 - o) Lillian Shirley, Director, Multnomah County Health Department;
 - p) Mayor Mike Weatherby, City of Fairview;
 - q) Max Williams, Director, Oregon Department of Corrections, or designated representative.
2. The Board appoints District Attorney Michael D. Schrunk Chair of the Permanent Work Group to Advise the County Commission on Jail Policies and Procedures for a term of one year, commencing on December 21, 2007.

ADOPTED this 20th day of December, 2007,

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
Agnes Sowle, County Attorney

SUBMITTED BY:

Lisa Naito, Commissioner District 3

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 07-191

Appointing the Chair and Members of the Permanent Work Group to Advise the County Commission on Jail Policies and Procedures for a Term of One Year, Commencing on December 21, 2007

The Multnomah County Board of Commissioners Finds:

- a. On November 30, 2006, by Resolution 06-197, the Board established a Permanent Work Group to advise the county commission on jail policies and procedures.
- b. A chair and members of this committee were appointed for a one year term commencing on December 1, 2006, and appointments need to be made for the next term.

The Multnomah County Board of Commissioners Resolves:

1. The Board appoints the following citizens of Multnomah County to the Permanent Work Group To Advise the County Commission on Jail Policies and Procedures for a term of one year, commencing on December 21, 2007:
 - a) Phil Anderchuk, Sergeant, Multnomah County Sheriff's Office; President, Multnomah County Corrections Deputies Association;
 - b) Rod Beard, Assistant Chief, Portland Police Bureau;
 - c) Jimmy Brown, Public Information and Community Outreach Manager, Portland Water Bureau; former Inter-Cultural Communications Manager, Department of Community Justice, Multnomah County;
 - d) Charles Daniels, Warden, Federal Correctional Institution Sheridan;
 - e) Chris Hoy, former Corrections Commander, Marion County;
 - f) Karin Immergut, U. S. Attorney for the District of Oregon;
 - g) Dick Inukai, President, Dick's Country Dodge/Dick's MacKenzie Ford; Chair, Boys & Girls Club; Member, Board of Directors, Citizens Crime Commission;
 - h) Chair Ted Wheeler, Multnomah County;
 - i) Sandra McDonough, President and CEO, Portland Business Alliance;
 - j) Commissioner Jeff Cogen, Multnomah County;
 - k) Carla Piluso, Chief, Gresham Police Department;
 - l) David Rogers, Executive Director, Partnership for Safety and Justice;

- m) District Attorney Michael D. Schrunk, Multnomah County;
 - n) Dave Shields, former City of Gresham Councilor; Director, Mt. Hood Community College District Board of Education;
 - o) Lillian Shirley, Director, Multnomah County Health Department;
 - p) Mayor Mike Weatherby, City of Fairview;
 - q) Max Williams, Director, Oregon Department of Corrections, or designated representative.
2. The Board appoints District Attorney Michael D. Schrunk Chair of the Permanent Work Group to Advise the County Commission on Jail Policies and Procedures for a term of one year, commencing on December 21, 2007.

ADOPTED this 20th day of December, 2007,



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Agnes Sowle, County Attorney

SUBMITTED BY:

Lisa Naito, Commissioner District 3



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 12/20/07
Agenda Item #: R-5
Est. Start Time: 10:10 AM
Date Submitted: 11/28/07

Agenda Title: Second Reading and Possible Adoption of a Proposed ORDINANCE Amending Multnomah County Code, Chapter 12, Business Income Tax

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

Requested Meeting Date:	December 20, 2007	Amount of Time Needed:	1 minute
Department:	Non-Departmental	Division:	Commissioner District 2
Contact(s):	Warren Fish, Jeff Cogen		
Phone:	503.988.5219	Ext.:	85219
I/O Address:	503/600		
Presenter(s):	Warren Fish, Mark Campbell		

General Information

1. What action are you requesting from the Board?

We are requesting that the Board approve the second reading and adopt an ordinance which amends the County Code related to the Business Income Tax (BIT).

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.

In April, 2007 the Board of County Commissioners unanimously approved resolution 07-054 which implemented recommendations made by the BIT Workgroup. That group concluded the current tax structure in Multnomah County:

- unfairly burdens certain types of businesses;
- weakens our County's economic competitiveness; and
- is unduly volatile as a source of revenue to the County.

The BIT Workgroup recommended that the County BIT code align closely with changes that have already been made to the City of Portland's Business License Fee (BLF) code.

The ordinance being considered by the Board will implement the code changes outlined in

resolution 07-054 as well as provide some minor "housekeeping" and language changes which are meant to ensure compliance with the City code. The three major changes being brought forward at this time are:

- increasing the Owner's Compensation allowance from \$61,500 to \$80,000 for tax years beginning January 1, 2008. The allowance will be indexed for inflation in future years.
- increasing the Gross Receipts Exemption from \$25,000 to \$50,000 for tax years beginning January 1, 2008; and
- implementing a minimum tax payment of \$100 for tax years beginning January 1, 2008.

In addition, the City of Portland has suggested some language changes related to administration of the BIT that are designed to clarify definitions and updated wording so that it is consistent between the two respective codes. These are detailed in the document titled "Chapter 12 MCBIT Code Change Summary" that is included with the agenda materials.

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

Based on 2004 tax data it is estimated that aligning the BIT code with the City of Portland's BLF code will have a slightly negative impact on County General Fund revenues. Had the code changes related to the Owner's Compensation Allowance, Gross Receipts Exemption, and Minimum Tax Payment been in place in that year it is estimated that BIT revenues would have been approximately \$700,000 lower than actual collections. However, it is important to note that the addition of a minimum payment will help somewhat to stabilize the BIT and will provide for greater predictability in forecasting annual tax collections.

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

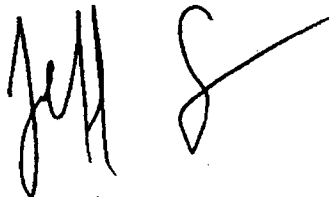
Code changes have been reviewed by the County Attorney and were found to be consistent with the existing City of Portland BLF code.

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

The Board convened a BIT Workgroup in March specifically to examine the Business License Fee reforms adopted by the City of Portland. The group was comprised of a wide variety of business interests and other community stakeholders. The City of Portland's Revenue Bureau has been instrumental in assisting with drafting the code changes and ensuring that the respective BIT/BLF codes are as consistent as possible.

Required Signature

**Elected Official or
Department/
Agency Director:**



Date: 11/26/07

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. _____

Amending MCC Chapter 12, Business Income Tax

(Language stricken is deleted; double underlined language is new.)

Multnomah County Ordains as follows:

Section 1. **§12.020 is amended as follows:**

12.020 Conformity To State Income Tax Laws.

_____(A)____The Business Income Tax Law shall be construed in conformity with the laws and regulations of the state imposing taxes on or measured by net income as those laws existed for that particular tax year~~they are amended on or before December 31, 1997~~. The Administrator shall have the authority by written policy~~administrative rules adopted in accordance with §-12.210~~, to connect to or disconnect from any legislative enactment that deals with income or excise taxation or the definition of income. _

_____(B)____Should a question arise under the Business Income Tax Law on which this chapter is silent, the Administrator may look to the laws of the State of Oregon for guidance in resolving the question, provided that the determination under state law is not in conflict with any provision of this chapter or the state law is otherwise inapplicable.

Section 2. **§ 12.100 is amended as follows**

12.100 Definitions.

For the purpose of this chapter, the terms used in this chapter shall be defined as provided in this chapter or in Administrative Rules, adopted under § 12.210 of this chapter, unless the context requires otherwise.

ADMINISTRATOR. The ~~Bureau of Licenses, City of Portland,~~ Revenue Bureau along with its employees and agents.

APPEALS BOARD. The hearings body designated by the Board to review taxfiler appeals from final determinations by the Administrator.

BUSINESS. An enterprise, activity, profession or undertaking of any nature, whether related or unrelated, by a person in the pursuit of profit, gain or the production of income,

including services performed by an individual for remuneration, but does not include wages earned as an employee.

CONTROLLING SHAREHOLDER. Any person, either alone or together with that person's spouse, parents, and/or children, who, directly or indirectly, owns more than 5% of any class of outstanding stock or securities of the taxfiler. The term **CONTROLLING SHAREHOLDER** may mean the controlling shareholder individually or in the aggregate.

DAY. A calendar day unless otherwise noted.

DIRECTOR. Multnomah County Chief Financial Officer.

DIVISION. The Finance Budget & Tax Office of the county.

DOING BUSINESS. To engage in any activity in pursuit of profit or gain, including but not limited to, any transaction involving the holding, sale, rental or lease of property, the manufacture or sale of goods or the sale or rendering of services other than as an employee. Doing business includes activities carried on by a person through officers, agents or employees as well as activities carried on by a person on his or her own behalf.

EMPLOYEE. Any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance.

INDIVIDUAL. A natural person.

NET OPERATING LOSS. The negative taxable income that may result after the deductions allowed by the Business Income Tax Law in determining net income for the tax year.

NONBUSINESS INCOME. Income not created in the course of the taxfiler's business activities.

NOTICE. A written document mailed first class by the Administrator or division to the last known address of a taxfiler as provided to the Administrator or division in the latest tax return on file with the Administrator.

OWNERSHIP OF OUTSTANDING STOCK OR SECURITIES. The incidents of ownership which include the power to vote on the corporation's business affairs or the power to vote for the directors, officers, operators or other managers of the taxfiler.

PERSON. Includes, but is not limited to Aa natural person, proprietorship, partnership, limited partnership, family limited partnerships, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business.

RECEIVED. The postmark date affixed by the United States postal service if mailed or the date stamp if delivered by hand or sent by facsimile or the receipt date from the online file and pay application confirmation notice.

TAX YEAR. The taxable year of a person for federal or state income tax purposes.

TAXFILER. A person doing business in the county and required to file a return under the Business Income Tax Law.

Section 3. § 12.110 is amended as follows

12.110 Income Defined.

For the purpose of this chapter, the following definition shall apply unless the context requires a different meaning.

INCOME. The net income arising from any business, as reportable to the State of Oregon for personal income, corporation excise, or income tax purposes, before any allocation or apportionment for operation out of state, or deduction for a net operating loss carry-forward or carry-back.

(A) Partnerships, S corporations, limited liability companies, limited liability partnerships, family limited partnerships, estates, ~~and trusts, and joint ventures~~ shall be liable for the business tax and not the individual partners, shareholders, members, ~~or beneficiaries or owners~~. The income of these entities shall include all income received by the entity including ordinary income, interest and dividend income, income from sales of business assets and other income attributable to the entity.

(B) If one or more persons are required or elect to report their income to the state for corporation excise or income tax purposes or personal income tax purposes in a consolidated, combined or joint return, a single return shall be filed by the person filing such return. In such cases, **INCOME** means the net income of the consolidated, combined or joint group of taxfilers before any allocation or appointment for operation out of the state, or deduction for a net operating loss carrying-forward or carry-back.

(C) The absence of report income to the Internal Revenue Service or the state shall not limit the ability of the Administrator to determine the correct income of the taxfiler through examination under § 12.260 of this chapter.

Section 4. § 12.200 is amended as follows

12.200 Administration.

(A) The City of Portland, ~~Revenue Bureau of Licenses~~ shall be the Administrator of record and shall have the authority to administer and enforce this chapter effective January 1, 1994 to include, but not limited to, administrative return processing, auditing, determinations, collection of taxes, penalties and interest (including instituting legal action in any court of

competent jurisdiction by or on behalf of the Division or Administrator), protests and appeals that occur on or after January 1, 1994.

(B) The Administrator shall have access to and maintain all tax filings and records, under this chapter, on behalf of the county. The Administrator may, upon request, interpret how this chapter applies, in general or for a certain set of circumstances. Nothing in this chapter shall preclude the informal disposition of controversy by stipulation or agreed settlement, through correspondence or a conference with the Administrator.

Section 5. § 12.230 is amended as follows

12.230 Confidentiality.

Except as provided in this chapter or otherwise required by law, it shall be unlawful for the division or the Administrator, or any elected official, employee, or agent of the county, or for any person who has acquired information pursuant to § 12.240(A) and (C) to divulge, release, or make known in any manner any financial information submitted or disclosed to the county under the terms of the Business Income Tax Law. Nothing in this section shall be construed to prohibit:

(A) The disclosure of the names and addresses of any persons who have filed a tax account with the Administrator~~return; or~~

(B) The disclosure of general statistics in a form which would prevent the identification of financial information regarding an individual taxfiler;

(C) The filing of any legal action by or on behalf of the Division or Administrator to obtain payment on unpaid accounts or the disclosure of information necessary to do so; or:

(D) The assignment to an outside collection agency of any unpaid account balance receivable provided that the Division or Administrator notifies the taxfiler of the unpaid balance at least 60 days prior to the assignment of the claim. Any assignment to an outside collection agency is subject to a reasonable collection fee, above and beyond any amount owed to the County.

Section 6. § 12.240 is amended as follows

12.240 Persons To Whom Information May Be Furnished.

(A) ~~(1)~~—The division or Administrator may disclose and give access to information described in § 12.230 to an authorized representative of the Department of Revenue, State of Oregon, or of any local government of the state imposing taxes upon or measured by gross receipts or net income, for the following purposes:

(1) ~~(a)~~—To inspect the tax return of any taxfiler;

- (2) (b)——To obtain an abstract or copy of the tax return;
- (3) (e)——To obtain information concerning any item contained in any return; or
- (4) (d)——To obtain information of any financial audit of the tax returns of any taxfiler.

(2)——Such disclosure and access shall be granted only if the laws, regulations or practices of such other jurisdiction maintain the confidentiality of such information at least to the extent provided by the Business Income Tax Law.

(B) Upon request of a taxfiler, or authorized representative, the Administrator shall provide copies of any tax return information filed by the tax filer in the Administrator's possession.

(C) The division or Administrator may also disclose and give access to information described in § 12.230 to:

(1) The County Attorney, his or her assistants and employees, or other legal representatives of the County, to the extent the division deems disclosure or access necessary for the performance of the duties of advising or representing the division.

(2) The City Attorney, his or her assistants and employees, or other legal representatives of the City, to the extent the Administrator deems disclosure or access necessary for the performance of the duties of advising or representing the Administrator, including but not limited to instituting legal actions on unpaid accounts.

(23) Other county employees and agents, to the extent the division deems disclosure or access necessary for such employees or agents to perform their duties under contracts or agreements between the division and any other department, division, agency or subdivision of the county relating to the administration of the Business Income Tax Law.

(4) City of Portland employees, agents and officials of the City, to the extent the Administrator deems disclosure or access necessary for such employees, agents or officials to:

(a) Aid in any legal collection effort on unpaid accounts;

(b) Perform their duties under contracts or agreements between the Administrator and any other department, bureau, agency or subdivision of the City relating to the administration of the Business Income Tax Law; or

(c) Aid in determining whether a Business Income Tax account is in compliance with all City, State and Federal laws or policies.

(D) All employees and agents of the division or county, prior to the performance of duties involving access to financial information submitted to the county under the terms of the

Business Income Tax Law, shall be advised in writing of the provision of § 12.730 relating to penalties for the violation of §§ 12.240 and 12.255. Such employees and agents shall execute a certificate in a form prescribed by the division, stating that the person has reviewed these provisions of law, has had them explained, and is aware of the penalties for the violation of §§ 12.230, 12.240 and 12.255.

(E) Prior to any disclosures permitted by this section, all persons described in subsection (A), to whom disclosure or access to financial information is given, shall:

(1) Be advised in writing of the provisions of § 12.730 relating to penalties for the violation of § 12.230; and

(2) Execute a certificate in a form prescribed by the division, stating these provisions of law have been reviewed and they are aware of the penalties for the violation of § 12.230.

(F) The director's signature on the certificate, required by subsection (E)(2), shall constitute consent to disclosure to the persons executing the certificate.

Section 7. § 12.260 is amended as follows

12.260 Examination Of Books, Records Or Persons.

(A) The Administrator may examine any books, papers, records, or memoranda, including state and federal income or excise tax returns, to ascertain the correctness of any tax return or to make an estimate of any tax. The Administrator shall have the authority, after notice, to:

(1) Require the attendance of any person required to file a tax return under the Business Income Tax Law, or officers, agents, or other persons with knowledge of the person's business operations, at any reasonable time and place the Administrator may designate;

(2) Take testimony, with or without the power to administer oaths to any person required to be in attendance; ~~and~~

(3) Require proof for the information sought, necessary to carry out the provisions of this chapter; and

(4) Require the property manager of a tenant-in-common arrangement to provide financial information related to the arrangement as well as information regarding the owners, including, but not limited to, the name and last known addresses of the owners.

(B) The Administrator shall designate the employees who shall ~~designate the employees who shall~~ have the power to administer oaths hereunder. Such employees shall be notaries public of the State of Oregon.

Section 8. § 12.280 is amended as follows

12.280 Deficiencies And Refunds.

(A) Deficiencies may be assessed and refunds granted any time within the period provided under ORS 314.410, 314.415, and 317.950. The Administrator may by agreement with the taxfiler extend such time periods to the same extent as provided by statute.

~~_____ (B) Notwithstanding subsection (A), if no tax return is filed, the Administrator may determine taxes due under this chapter at any time based on the best information available to the Administrator. Taxes determined under this subsection shall be assessed and subject to penalties and interest from the date the taxes should have been paid as provided in § 12.510 of this in accordance with §§ 12.700 and 12.710. The Administrator shall send notice of the determination and assessment to the person doing business in the county.~~

(~~B~~) Consistent with ORS 314.410(3), in cases where no tax return has been filed, there shall be no time limit for a notice of deficiency and/or the assessment of taxes, penalty and interest due.

_____ (C) Notwithstanding subsections (A) and (B), the Administrator is not required to accept any tax return from a taxfiler if:

_____ (1) The Administrator obtains a money judgment against the taxfiler for failure to pay an unpaid account balance due; and

_____ (2) The Administrator or its designee lawfully served the taxfiler with the lawsuit pursuant to the Oregon Rules of Civil Procedure; and

_____ (3) The tax return is for a taxable year that is the subject of the general money judgment; and

_____ (4) The Administrator gave written notice stating that the taxfiler had an outstanding balance due at least 60 days before the Administrator (or its designee) filed a lawsuit for those particular taxable years.

Section 9. § 12.290 is amended as follows

12.290 Protests And Appeals.

(A) Any determination by the Administrator may be protested by the taxfiler. Written notice of the protest must be received by the Administrator within 30 days after the notice of determination was mailed or delivered to the taxfiler. The protest shall state the name and address of the taxfiler and an explanation of the grounds for the protest. The Administrator shall respond within 30 days after the protest is filed with the Administrator with either a revised determination or a final determination. The Administrator's determination shall include the

reasons for the determination and state the time and manner for appealing the determination. The time to file a protest or the time for the Administrator's response may be extended by the Administrator, for good cause. Requests for extensions of time must be received prior to the expiration of the original 30-day protest deadline. Written notice shall be given to the taxfiler if the Administrator's deadline is extended.

(B) Any final determination by the Administrator may be appealed by the taxfiler to the appeals board. Written notice of the appeal must be received by the Administrator within 30 days after the final determination was mailed or delivered to the appellant. The notice of appeal shall state the name and address of the appellant and include a copy of the final determination.

(C) (1)——Within 90 days after the final determination was mailed or delivered to the taxfiler, the appellant shall file with the appeals board a written statement containing:

(1) (a)——The reasons the Administrator's determination is incorrect; and

(2) (b)——What the correct determination should be.

(2)——Failure to file such a written statement within the time permitted shall be deemed a waiver of any objections, and the appeal shall be dismissed.

(D) Within 150 days after the final determination was mailed or delivered to the taxfiler, the Administrator shall file with the appeals board a written response to the appellant's statement. A copy of the Administrator's response shall be promptly mailed to the address provided by the appellant.

(E) The appellant shall be given not less than 14 days prior written notice of the hearing date and location. The appellant and the Administrator shall have the opportunity to present relevant testimony and oral argument. The appeals board may request such additional written comment and documents as it deems appropriate.

(F) Decisions of the appeals board shall be in writing, state the basis for the decision and be signed by the appeals board chair.

(G) The decision of the appeals board shall be final on the date it is issued and no further administrative appeal shall be provided.

(H) The filing of an appeal with the appeals board shall temporarily suspend the obligation to pay any tax that is the subject of the appeal pending a final decision by the appeals board.

(I) Penalty waiver and/or reduction requests are not subject to the protest/appeal process until the taxfiler receives written notice from the Administrator that the taxfiler's request was either denied or only approved in part. The Administrator shall respond to requests to reduce and/or waive late and/or underpayment penalties within 60 days from the date that the written request is received by the Administrator.

Section 10. § 12.400 is amended as follows

12.400 Exemptions.

To the extent set forth below, the following persons or incomes are exempt from tax requirements imposed by the Business Income Tax Law:

(A) Persons whom the county is prohibited from taxing under the Constitution or laws of the United States or the Constitution or laws of the State of Oregon or County Charter.

(B) Income arising from transactions which the county is prohibited from taxing under the Constitution or the laws of the United States or the Constitution or laws of the State of Oregon or County Charter.

(C) Persons whose gross receipts from all business, both within and without the county, amount to less than \$50,000 (\$25,000 for in any tax years that begin prior to January 1, 2008). The Administrator may demand a statement that the person's gross receipts for any tax year were less than the stated exemption amount for the tax year for which exemption is claimed \$25,000.

(D) Corporations exempt from the State of Oregon Corporation Excise Tax under ORS 317.080, provided that any such corporation subject to the tax on unrelated business income under ORS 317.920 to 317.930 shall pay a tax based solely on such income.

(E) Trusts exempt from federal income tax under Internal Revenue Code Section 501, provided that any exempt trust subject to tax on unrelated business income and certain other activities under Internal Revenue Code Section 501(b) shall be subject to the tax under this chapter based solely on that income.

(F) Any individual whose only business transactions are exclusively limited to the renting or leasing of residential real property dwelling units provided that the beneficial owner rents or leases less than ten total units, regardless of whether the units are located inside or outside of the County. For purposes of this subsection, payments to foster care and other service providers shall be considered payments for "services" and not for "rent". If a building contains more than one residential living quarter, the term "dwelling unit" refers to each separate living quarter. This exemption does not apply if any income is recognized from the sale of residential property following activities:

~~_____ (1) Sales, exchanges or involuntary conversions of real property not held for sale in the ordinary course of a trade or business, unless the real property is used in the trade or business in connection with the production of income; or~~

~~_____ (2) The sale of personal property acquired for household or other personal use by the seller; or~~

~~_____ (3) (a) Interest and dividend income earned from investments if the income is not created in the course of or related to the taxfiler's business activities; or~~

~~_____ (b) Gains or losses incurred from the sale of assets which are not a part of a trade or business; or~~

~~_____ (4) The renting or leasing of residential real property, if the beneficial owner of such real property does not rent or lease more than nine dwelling units, at least one of which is within the county.~~

_____ (G) Income of an individual from:

_____ (1) Sales, exchanges or involuntary conversions of a primary or secondary residence;

_____ (2) Sale of personal property acquired for household or other personal use by the seller;

_____ (3) Interest and dividend income earned from investments, if the income is not created in the course of or related to the taxfiler's business activities; and

_____ (4) Gains and losses incurred from the sale of investments (other than real property) that are not a part of a business.

(GH) Any person whose only business transactions are exclusively limited to the following activities:

(1) Raising, harvesting and selling of the person's own crops, or the feeding, breeding, management and sale of the person's own livestock, poultry, furbearing animals or honeybees, or sale of the produce thereof, or any other agricultural, horticultural or animal husbandry activity carried on by any person on the person's own behalf and not for others, or dairying and the sale of dairy products to processors. This exemption shall not apply if, in addition to the farm activities described in this subsection, the person does any processing of the person's own farm products which changes their character or form, or the person's business includes the handling, preparation, storage, processing or marketing of farm products raised or produced by others; or the processing of milk or milk products whether produced by said person or by others for retail or wholesale distribution.

(2) Operating within a permanent structure a display space, booth or table for selling or displaying merchandise by an affiliated participant at any trade show, convention, festival, fair, circus, market, flea market, swap meet or similar event for less than 14 days in any tax year.

Section 11. § 12.500 is amended as follows

12.500 Imposition And Rate Of Tax.

(A) Except as otherwise provided in this chapter, a tax is imposed upon each person doing business within the county equal to 1.45% of the net income from the business within the county effective with tax years beginning on or after January 1, 1993. For tax years beginning on or after January 1, 2008 each taxfiler not otherwise exempt shall determine their tax at the rate established in this section, provided that each shall pay at least a minimum tax of \$100.00.

(B) The payment of a tax required hereunder and the acceptance of such tax shall not entitle a taxfiler to carry on any business not in compliance with all the requirements of this code and all other applicable laws.

(C) For the business year beginning on or after January 1, 1998, if the tax imposed by this section exceeds \$100, each person doing business within Multnomah County shall pay, in addition, a Temporary Education Surcharge equal to one half percent (.50%) of the net income from the business within the County. This surcharge shall be in effect only for 1998 and shall not apply to business years beginning on or after January 1, 1999.

(D) The receipts from the surcharge imposed by subsection (C) shall be used only to benefit public schools in Multnomah County. Receipts from the Temporary Educational BIT surcharge shall only be used to maintain or reduce class size by preventing teacher layoffs in FY 1998-99. The public school districts with projected budget shortfalls in FY 98-99 shall only spend surcharge revenues to pay for salaries of teacher positions or other state certified personnel, which would otherwise be eliminated. To be eligible for BIT surcharge funds, school districts with projected budget shortfalls in FY 98-99 shall submit a list of positions for state certified positions subject to elimination from the budget and their accompanying salary, to Multnomah County no later than May 30, 1998. Districts without budget shortfalls in FY 98-99 shall submit a list of additional teaching positions and other staff certified positions and materials directly related to instruction. Multnomah County will allocate the BIT surcharge revenues to each public school to pay for teacher positions or other state certified positions, based upon the list submitted by each school district.

(E) The Temporary Education Surcharge receipts shall be distributed to every public school district in Multnomah County according to a formula approved by the Board of County Commissioners.

Section 12. § 12.550 is amended as follows

12.550 Presumptive Tax.

(A) If a person fails to file a return, a rebuttable presumption shall exist that the tax payable amounts to \$500 for every tax year for which a return has not been filed.

(B) Nothing in this section shall prevent the Administrator from assessing, ~~under § 12.280(B)~~ a tax due which is less than or greater than \$500 per tax year.

(C) If the taxfiler filed a tax return the previous tax year, then presumptive taxes assessed under this subsection shall be considered a tax return. Presumptive taxes assessed

under this subsection shall be considered filed documents and shall be subject to the time limitations for deficiencies and refunds as described in subsection 12.280.

(D) Taxes determined under this subsection shall be assessed and subject to penalties and interest from the date the taxes should have been paid as provided in subsection 12.510 in accordance with subsections 12.700 and 12.710. The Administrator shall send notice of the determination and assessment to the person doing business in the County.

Section 13. § 12.600 is amended as follows

12.600 Income Determinations.

(A) *Owners compensation deduction. OWNERS COMPENSATION DEDUCTION* is defined as the additional deduction allowed in subsections (B), (C) and (D) below.

(1) For tax years beginning prior to January 1, 1999, the owner's compensation deduction as defined in this section cannot exceed \$50,000 per owner, as defined in this section.

(2) For tax years beginning on or after January 1, 1999, the owners compensation deduction will be indexed by the Consumer Price Index - All Urban Consumers (CPI-U) U.S. City Average as published by the U.S. Department of Labor, Bureau of Labor Statistics, using the September to September index, not seasonally adjusted (unadjusted index). The initial index will be the September 1998 to September 1999 index. The Administrator will determine the exact deduction amount and publish the amount in written policy and included on forms. Any increase or decrease under this subsection which is not a multiple of \$500 shall be rounded up or down to the next lowest multiple of \$500 at the Administrator's discretion.

(3) For tax years beginning on or after January 1, 2008, the owners compensation deduction cannot exceed \$80,000 plus CPI-U for September 2007 to September 2008 per owner as defined in Sections (B), (C) and (D) below.

(4) For tax years beginning on or after January 1, 2009, the owners compensation deduction will be indexed as described in (2) above.

(B) *Sole proprietorship.* In determining income, no deductions shall be allowed for any compensation for services rendered by, or interest paid to, owners. However, 75% of income determined without such deductions shall be allowed as an additional deduction, not to exceed the amount per owner as determined in subsection (A) above.

(C) *Partnerships.* In determining income, no deduction shall be allowed for any compensation for services rendered by, or interest paid to, owners of partnerships, limited partnerships, limited liability companies, limited liability partnerships or family limited partnerships. Guaranteed payments to partners or members shall be deemed compensation paid to owners for services rendered. However:

(1) For general partners or members, 75% of income determined without such deductions shall be allowed as an additional deduction, not to exceed the amount per general partner or member as determined in subsection (A) above.

(2) For limited partners or members of limited liability corporations who are deemed partners by administrative rule or policy, 75% of income determined without such deductions shall be allowed as an additional deduction, not to exceed the lesser of actual compensation and interest paid or the amount determined in subsection (A) above per compensated limited partner.

(D) *Corporations.* In determining income, no deduction shall be allowed for any compensation for services rendered by, or interest paid to, controlling shareholders of any corporation, including, but not limited to C and S corporations and any other entity electing treatment as a corporation, either C or S. However, 75% of the corporation's income, determined without deduction of compensation or interest, shall be allowed as a deduction in addition to any other allowable deductions, not to exceed the lesser of the actual compensation and interest paid or the amount for each controlling shareholder as determined in subsection (A) above.

(1) For purposes of this subsection, to calculate the compensation for services rendered by or interest paid to controlling shareholders that must be added back to income, wages, salaries, fees, or interest paid to all persons meeting the definition of a controlling shareholder, must be included.

(2) For purposes of this subsection, in determining the number of controlling shareholders, a controlling shareholder and that person's spouse, parents and children count as one owner, unless such spouse, parent or child individually own more than 5% ownership of outstanding stock or securities in their own name. In that case, each spouse, parent or child who owns more than 5% of stock shall be deemed to be an additional controlling shareholder.

(3) For purposes of this subsection (C), joint ownership of outstanding stock or securities shall not be considered separate ownership.

(E) *Estates and trusts.* In determining income for estates and trusts, income shall be measured before distribution of profits to beneficiaries. No additional deduction shall be allowed.

(F) *Nonbusiness income.* In determining income under this section, an allocation shall be allowed for nonbusiness income as reported to the State of Oregon. However, income treated as nonbusiness income for State of Oregon tax purposes may not necessarily be defined as nonbusiness income under the Business Income Tax Law. Interest and dividend income, rental income or losses from real and personal business property, and gains or losses on sales of property or investments owned by a trade or business shall be treated as business income for purposes of the Business Income Tax Law. Income derived from non-unitary business functions reported at the state level may be considered nonbusiness income. Non-unitary income will not be recognized at an intrastate level. The taxfiler shall have the burden of showing that income is nonbusiness income.

(G) *Tax based on or measured by net income.* In determining income, no deduction shall be allowed for taxes based on or measured by net income. No deduction shall be allowed for the federal built-in gains tax.

(H) *Ordinary gain or loss.* In determining income, gain or loss from the sale, exchange or involuntary conversion of real property or tangible and intangible personal property not exempt under § 12.400(FG) and § 12.400(H) shall be included as ordinary gain or loss.

(I) *Net operating loss.* In determining income, a deduction shall be allowed equal to the aggregate of the net operating losses incurred in prior years, not to exceed 75% of the income determined for the current tax year before this deduction but after all other deductions from income allowed by this section and apportioned for business activity both within and without the county.

(1) When the operations of the taxfiler from doing business both within and without the county result in a net operating loss, such loss shall be apportioned in the same manner as the net income under § 12.600. However, in no case shall a net operating loss be carried forward from any tax year during which the taxfiler conducted no business within the county or the taxfiler was otherwise exempt from tax filing requirements.

(2) In computing the net operating loss for any tax year, the net operating loss of a prior tax year shall not be allowed as a deduction.

(3) In computing the net operating loss for any tax year, no compensation allowance deduction shall be allowed to increase the net operating loss. **COMPENSATION ALLOWANCE DEDUCTION** is defined as the additional deduction allowed by subsection (A).

(4) The net operating loss of the earliest tax year available shall be exhausted before a net operating loss from a later tax year may be deducted.

(5) The net operating loss in any tax year shall be allowed as a deduction in any of the five succeeding tax years until used or expired. Any partial tax year shall be treated the same as a full tax year in determining the appropriate carry-forward period.

Section 14. § 12.700 is amended as follows

12.700 Penalty.

(A) (1) A penalty shall be assessed if a person:

(4) (a) Fails to file a tax return or extension request at the time required under §§ 12.510(A) or 12.620(A); or

(b) Fails to pay a tax when due.

(2) The penalty under subsection (A) shall be calculated as:

(a) Five percent of the total tax liability if the failure is for a period less than four months;

(b) An additional penalty of 20% of the total tax liability if the failure is for a period of four months or more; and

(c) An additional penalty of 100% of the total tax liability of all tax years if the failure to file is for three or more consecutive tax years.

(B) (1) A penalty shall be assessed if a person who has filed an extension request:

(+)(a) Fails to file a tax return by the extended due date; or

(b) Fails to pay the tax liability by the extended due date.

(2) The penalty under subsection (B) shall be calculated as:

(a) Five percent of the total tax liability if the failure is for a period of less than four months; and

(b) An additional penalty of 20% of the total tax liability if the failure is for a period of four months or more.

(C) (1) A penalty shall be assessed if a person:

(+)(a) Fails to pay at least 90% of the total tax liability by the original due date; or

(b) Fails to pay at least 100% of the prior year's total tax liability by the original due date.

(2) The penalty under subsection (C) shall be calculated as:

~~(a) Five percent~~5% of the tax underpayment, but not less than \$5, if the failure is for a period less than four months; and

~~(b) An additional penalty of 20% of the tax underpayment if the failure is for a period of four months or more.~~

(D) The Administrator may impose a civil penalty of up to \$500 for each of the following violations of this chapter:

(1) Failure to file any tax return within ~~90~~60 days of the Administrator's original written notice to file;

(2) Failure to pay any tax within ~~90~~60 days of the Administrator's original written notice for payment; or

(3) Failure to provide documents as required by §§ 12.260 within ~~90~~60 days of the Administrator's original written notice to provide documents.

(E) The Administrator may impose a civil penalty under subsection (D) only if the Administrator gave notice of the potential for assessment of civil penalties for failure to comply or respond in the original written notice.

(F) The Administrator may waive or reduce any penalty determined under subsections (A) through (D) for good cause, according to and consistent with written policies.

Section 15. § 12.710 is amended as follows

12.710 Interest.

(A) Interest shall be collected on any unpaid tax at the rate of .833% simple interest per month or fraction thereof (10% per annum), computed from the original due date of the tax to the fifteenth day of the month following the date of payment.

(B) ~~(1)~~—Interest shall be collected on any unpaid or underpaid quarterly estimated payment required by §§ 12.520 and 12.530 at the rate of .833% simple interest per month or fraction thereof (10% per annum), computed from the due date of each quarterly estimated payment to the original due date of the tax return to which the estimated payments apply.

(C) ~~(2)~~—Notwithstanding subsection (B)~~(1)~~, there shall be no interest on underpayment of quarterly estimated payments if:

(1) ~~(a)~~—The total tax liability of the prior tax year was less than \$1,000;

(2) ~~(b)~~—An amount equal to at least 90% of the total tax liability for the current tax year was paid in accordance with § 12.530; or

(3) ~~(c)~~—An amount equal to at least 100% of the prior year's total tax liability was paid in accordance with § 12.530.

(D) ~~(3)~~—For purposes of subsection (B)~~(1)~~, the amount of underpayment is determined by comparing ~~the 90%~~ of the current total tax liability amount to quarterly estimated payments made prior to the original due date of the tax return. However, if 100% of the prior year's total tax liability is paid to the Administrator by the due date of the fourth quarterly payment, the Administrator may use the prior year's tax liability if doing so will reduce the amount of interest owed.

~~—(C)—If a person fails to file a tax return on the prescribed date, or any extension thereof granted under § 12.510(B), the Administrator may determine the tax due based on the best information available to the Administrator. If the Administrator determines the tax due under this~~

~~subsection, the Administrator shall assess appropriate penalties and interest and shall send notice to such person of the determination and assessment.~~

(DE) For purposes of subsection (A), the amount of tax due on the tax return shall be reduced by the amount of any tax payment made on or before the date for payment of the tax in accordance with § 12.510(A) or 12.530.

(EF) Interest at the rate specified in subsection (A) shall accrue from the original due date without regard to any extension of the filing date.

(FG) Any interest amounts properly assessed in accordance with this section may not be waived or reduced by the Administrator, unless specifically provided for by written policy.

Section 16. § 12.715 is amended as follows

12.715 Payments Applied.

Taxes received shall first be applied to any penalty accrued, then to interest accrued, then to taxes due, unless the Administrator determines in accordance with its written policies that a more equitable method exists for a particular taxfiler's account.

Section 17. § 12.720 is amended as follows

12.720 Interest On Refunds.

When, under a provision of the Business Income Tax Law, taxfilers are entitled to a refund of a portion or all of a tax paid to the Administrator, they shall receive simple interest on such amount at the rate specified in § 12.710(A), subject to the following:

(A) Any overpayments shall be refunded with interest for each month or fraction thereof for a period beginning four months after the later of:

_____ (1) the due date of the tax return;

_____ (2) the date the tax return was filed or the refund was otherwise requested; or

_____ (3) the date the tax was paid, whichever is later,

to the date of the refund; and

~~_____ (B) Any overpayments of estimated tax shall be refunded with interest for each month or fraction thereof for the period beginning four months after the date the final return was filed.~~

(EB) Any overpayments of taxes that are the result of an amended return being filed shall be refunded with interest for each month or fraction thereof for the period beginning four

months after the date the taxfiler filed the amended return-was filed. This subsection shall apply to tax returnsapplications that are amended due to a change to the federal, state or business income tax return.

Section 18. § 12.730 is amended as follows

12.730 Criminal Penalties.

Violation of §§ 12.230 or 12.240 is punishable, upon conviction thereof, by a fine not exceeding \$1,000500 or by imprisonment for a period not exceeding 12-six months, or by both fine and imprisonment. In addition, any county employee convicted for violation of §§ 12.230 or 12.240 shall be dismissed from employment and shall be barred from employment for a period of five years thereafter. Any agent of the county shall, upon conviction, be ineligible for participation in any county contract for a period of five years thereafter.

Section 19. § 12.840 is renumbered as follows

12.840-990 Participation Of Cities.

To facilitate a unified system of collection and allocation of all county and municipal taxes upon business net income within the county, any city the territory of which is in whole or in part within the county may, if authorized by its governing body, participate under and share in the revenue derived from this chapter, upon such terms and conditions as the county and city may agree by written contract.

Section 20. § 12.850 is renumbered as follows

12. 850-995 Former Regulations Superseded By This Subchapter; Exceptions.

Effective for tax years beginning on or after January 1, 1993, '90 MCC Chapter 5.70 shall be superseded and given no effect until this chapter is repealed or otherwise ceases to be effective. For tax years ending on or before December 31, 1992, all determinations of obligations and responsibilities required of any persons under '90 MCC Chapter 5.70, made on or before December 31, 1993 shall remain binding upon those persons. However, on and after January 1, 1994, this chapter [formerly §§ 11.500 et seq.] shall apply to all determinations of obligations and responsibilities for tax years ending on or before December 31, 1992 with the exceptions of:

- (A) Determination of income under '90 MCC 5.70.015;
- (B) Treatment of payments to owners or controlling shareholders under '90 MCC 5.70.025;
- (C) Net operating loss deduction under '90 MCC 5.70.030;

- (D) Ordinary gain or loss under '90 MCC 5.70.035;
- (E) Rate of tax under '90 MCC 5.70.045;
- (F) Apportionment of income under '90 MCC 5.70.050;
- (G) Partnerships, S corporations, estates and trusts under '90 MCC 5.70.055;
- (H) Exemptions under '90 MCC 5.70.060;
- (I) State laws incorporated by reference under '90 MCC 5.70.075 (except that the City of Portland; Revenue Bureau of Licenses shall replace any references to the state Department of Revenue as the Administrator of the Tax.);
- (J) Amendments under '90 MCC 5.70.110.

Section 21. § 12.845 is added as follows

12.845 Frivolous Filing.

A \$500.00 penalty shall be assessed if a taxfiler takes a "frivolous position" in respect to preparing the taxfiler's tax return. A tax return is considered frivolous if a taxfiler does not provide information on which the substantial correctness of the self-assessment may be judged or if the tax return contains information that on its face indicates that the self-assessment is substantially incorrect. Examples of "frivolous positions" as provided in Oregon Administrative Rule 150-316.992(5) are adopted by direct reference.

Section 22. § 12.855 is added as follows

12.845 Hacking.

(A) Definitions. As used in this section, the following definitions apply:

ADMINISTRATOR'S COMPUTER DATABASE. Computer application(s) used by the Administrator to calculate and store business and financial data collected under the authority granted by the Business Income Tax Law.

LOSS. Any reasonable cost incurred by the City of Portland, including but not limited to the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service.

DAMAGE. Any impairment to the integrity or availability of data, a program, a system, or information.

(B) Any individual who intentionally accesses the Administrator's computer database without authorization shall be fined:

(1) \$500 if the individual acquires any information regarding any business account found in the database;

(2) \$1,000 or the cost of the loss (whichever is greater) if the individual uses or attempts to use the acquired information for financial gain of any kind; or

(3) \$5,000 or the cost of the loss (whichever is greater) if the individual causes the transmission of a program, information, code, or command to the Administrator's computer database, and, as a result of such conduct, causes damage to the database.

FIRST READING:

December 13, 2007

SECOND READING AND ADOPTION:

December 20, 2007

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By Stephanie E. Duvall, Assistant County Attorney

SUBMITTED BY:
Mindy Harris, Chief Financial Officer

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 1104

Amending MCC Chapter 12, Business Income Tax

(Language stricken is deleted; double underlined language is new.)

Multnomah County Ordains as follows:

Section 1. §12.020 is amended as follows:

12.020 Conformity To State Income Tax Laws.

———(A)——The Business Income Tax Law shall be construed in conformity with the laws and regulations of the state imposing taxes on or measured by net income as those laws existed for that particular tax year~~they are amended on or before December 31, 1997.~~ The Administrator shall have the authority by written policy~~administrative rules adopted in accordance with § 12.210,~~ to connect to or disconnect from any legislative enactment that deals with income or excise taxation or the definition of income. _

———(B)——Should a question arise under the Business Income Tax Law on which this chapter is silent, the Administrator may look to the laws of the State of Oregon for guidance in resolving the question, provided that the determination under state law is not in conflict with any provision of this chapter or the state law is otherwise inapplicable.

Section 2. § 12.100 is amended as follows

12.100 Definitions.

For the purpose of this chapter, the terms used in this chapter shall be defined as provided in this chapter or in Administrative Rules, adopted under § 12.210 of this chapter, unless the context requires otherwise.

ADMINISTRATOR. The ~~Bureau of Licenses, City of Portland,~~ Revenue Bureau along with its employees and agents.

APPEALS BOARD. The hearings body designated by the Board to review taxfiler appeals from final determinations by the Administrator.

BUSINESS. An enterprise, activity, profession or undertaking of any nature, whether related or unrelated, by a person in the pursuit of profit, gain or the production of income,

including services performed by an individual for remuneration, but does not include wages earned as an employee.

CONTROLLING SHAREHOLDER. Any person, either alone or together with that person's spouse, parents, and/or children, who, directly or indirectly, owns more than 5% of any class of outstanding stock or securities of the taxfiler. The term **CONTROLLING SHAREHOLDER** may mean the controlling shareholder individually or in the aggregate.

DAY. A calendar day unless otherwise noted.

DIRECTOR. Multnomah County Chief Financial Officer.

DIVISION. The Finance Budget & Tax Office of the county.

DOING BUSINESS. To engage in any activity in pursuit of profit or gain, including but not limited to, any transaction involving the holding, sale, rental or lease of property, the manufacture or sale of goods or the sale or rendering of services other than as an employee. Doing business includes activities carried on by a person through officers, agents or employees as well as activities carried on by a person on his or her own behalf.

EMPLOYEE. Any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance.

INDIVIDUAL. A natural person.

NET OPERATING LOSS. The negative taxable income that may result after the deductions allowed by the Business Income Tax Law in determining net income for the tax year.

NONBUSINESS INCOME. Income not created in the course of the taxfiler's business activities.

NOTICE. A written document mailed first class by the Administrator or division to the last known address of a taxfiler as provided to the Administrator or division in the latest tax return on file with the Administrator.

OWNERSHIP OF OUTSTANDING STOCK OR SECURITIES. The incidents of ownership which include the power to vote on the corporation's business affairs or the power to vote for the directors, officers, operators or other managers of the taxfiler.

PERSON. Includes, but is not limited to Aa natural person, proprietorship, partnership, limited partnership, family limited partnerships, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business.

RECEIVED. The postmark date affixed by the United States postal service if mailed or the date stamp if delivered by hand or sent by facsimile or the receipt date from the online file and pay application confirmation notice.

TAX YEAR. The taxable year of a person for federal or state income tax purposes.

TAXFILER. A person doing business in the county and required to file a return under the Business Income Tax Law.

Section 3. § 12.110 is amended as follows

12.110 Income Defined.

For the purpose of this chapter, the following definition shall apply unless the context requires a different meaning.

INCOME. The net income arising from any business, as reportable to the State of Oregon for personal income, corporation excise, or income tax purposes, before any allocation or apportionment for operation out of state, or deduction for a net operating loss carry-forward or carry-back.

(A) Partnerships, S corporations, limited liability companies, limited liability partnerships, family limited partnerships, estates, ~~and trusts, and joint ventures~~ shall be liable for the business tax and not the individual partners, shareholders, members, ~~or beneficiaries or~~ owners. The income of these entities shall include all income received by the entity including ordinary income, interest and dividend income, income from sales of business assets and other income attributable to the entity.

(B) If one or more persons are required or elect to report their income to the state for corporation excise or income tax purposes or personal income tax purposes in a consolidated, combined or joint return, a single return shall be filed by the person filing such return. In such cases, **INCOME** means the net income of the consolidated, combined or joint group of taxfilers before any allocation or appointment for operation out of the state, or deduction for a net operating loss carrying-forward or carry-back.

(C) The absence of report income to the Internal Revenue Service or the state shall not limit the ability of the Administrator to determine the correct income of the taxfiler through examination under § 12.260 of this chapter.

Section 4. § 12.200 is amended as follows

12.200 Administration.

(A) The City of Portland, ~~Revenue Bureau of Licenses~~ shall be the Administrator of record and shall have the authority to administer and enforce this chapter effective January 1, 1994 to include, but not limited to, administrative return processing, auditing, determinations, collection of taxes, penalties and interest (including instituting legal action in any court of

competent jurisdiction by or on behalf of the Division or Administrator), protests and appeals that occur on or after January 1, 1994.

(B) The Administrator shall have access to and maintain all tax filings and records, under this chapter, on behalf of the county. The Administrator may, upon request, interpret how this chapter applies, in general or for a certain set of circumstances. Nothing in this chapter shall preclude the informal disposition of controversy by stipulation or agreed settlement, through correspondence or a conference with the Administrator.

Section 5. § 12.230 is amended as follows

12.230 Confidentiality.

Except as provided in this chapter or otherwise required by law, it shall be unlawful for the division or the Administrator, or any elected official, employee, or agent of the county, or for any person who has acquired information pursuant to § 12.240(A) and (C) to divulge, release, or make known in any manner any financial information submitted or disclosed to the county under the terms of the Business Income Tax Law. Nothing in this section shall be construed to prohibit:

(A) The disclosure of the names and addresses of any persons who have ~~filed a tax account with the Administrator~~return; or

(B) The disclosure of general statistics in a form which would prevent the identification of financial information regarding an individual taxfiler;

(C) The filing of any legal action by or on behalf of the Division or Administrator to obtain payment on unpaid accounts or the disclosure of information necessary to do so; or

(D) The assignment to an outside collection agency of any unpaid account balance receivable provided that the Division or Administrator notifies the taxfiler of the unpaid balance at least 60 days prior to the assignment of the claim. Any assignment to an outside collection agency is subject to a reasonable collection fee, above and beyond any amount owed to the County.

Section 6. § 12.240 is amended as follows

12.240 Persons To Whom Information May Be Furnished.

(A) (1) — The division or Administrator may disclose and give access to information described in § 12.230 to an authorized representative of the Department of Revenue, State of Oregon, or of any local government of the state imposing taxes upon or measured by gross receipts or net income, for the following purposes:

(1) (a) — To inspect the tax return of any taxfiler;

- (2) ~~(b)~~—To obtain an abstract or copy of the tax return;
- (3) ~~(e)~~—To obtain information concerning any item contained in any return; or
- (4) ~~(d)~~—To obtain information of any financial audit of the tax returns of any taxfiler.

(2)—Such disclosure and access shall be granted only if the laws, regulations or practices of such other jurisdiction maintain the confidentiality of such information at least to the extent provided by the Business Income Tax Law.

(B) Upon request of a taxfiler, or authorized representative, the Administrator shall provide copies of any tax return information filed by the tax filer in the Administrator's possession.

(C) The division or Administrator may also disclose and give access to information described in § 12.230 to:

(1) The County Attorney, his or her assistants and employees, or other legal representatives of the County, to the extent the division deems disclosure or access necessary for the performance of the duties of advising or representing the division.

(2) The City Attorney, his or her assistants and employees, or other legal representatives of the City, to the extent the Administrator deems disclosure or access necessary for the performance of the duties of advising or representing the Administrator, including but not limited to instituting legal actions on unpaid accounts.

(23) Other county employees and agents, to the extent the division deems disclosure or access necessary for such employees or agents to perform their duties under contracts or agreements between the division and any other department, division, agency or subdivision of the county relating to the administration of the Business Income Tax Law.

(4) City of Portland employees, agents and officials of the City, to the extent the Administrator deems disclosure or access necessary for such employees, agents or officials to:

(a) Aid in any legal collection effort on unpaid accounts;

(b) Perform their duties under contracts or agreements between the Administrator and any other department, bureau, agency or subdivision of the City relating to the administration of the Business Income Tax Law; or

(c) Aid in determining whether a Business Income Tax account is in compliance with all City, State and Federal laws or policies.

(D) All employees and agents of the division or county, prior to the performance of duties involving access to financial information submitted to the county under the terms of the

Business Income Tax Law, shall be advised in writing of the provision of § 12.730 relating to penalties for the violation of §§ 12.240 and 12.255. Such employees and agents shall execute a certificate in a form prescribed by the division, stating that the person has reviewed these provisions of law, has had them explained, and is aware of the penalties for the violation of §§ 12.230, 12.240 and 12.255.

(E) Prior to any disclosures permitted by this section, all persons described in subsection (A), to whom disclosure or access to financial information is given, shall:

(1) Be advised in writing of the provisions of § 12.730 relating to penalties for the violation of § 12.230; and

(2) Execute a certificate in a form prescribed by the division, stating these provisions of law have been reviewed and they are aware of the penalties for the violation of § 12.230.

(F) The director's signature on the certificate, required by subsection (E)(2), shall constitute consent to disclosure to the persons executing the certificate.

Section 7. § 12.260 is amended as follows

12.260 Examination Of Books, Records Or Persons.

(A) The Administrator may examine any books, papers, records, or memoranda, including state and federal income or excise tax returns, to ascertain the correctness of any tax return or to make an estimate of any tax. The Administrator shall have the authority, after notice, to:

(1) Require the attendance of any person required to file a tax return under the Business Income Tax Law, or officers, agents, or other persons with knowledge of the person's business operations, at any reasonable time and place the Administrator may designate;

(2) Take testimony, with or without the power to administer oaths to any person required to be in attendance; and

(3) Require proof for the information sought, necessary to carry out the provisions of this chapter; and

(4) Require the property manager of a tenant-in-common arrangement to provide financial information related to the arrangement as well as information regarding the owners, including, but not limited to, the name and last known addresses of the owners.

(B) The Administrator shall designate the employees who shall ~~designate the employees who shall~~ have the power to administer oaths hereunder. Such employees shall be notaries public of the State of Oregon.

Section 8. § 12.280 is amended as follows

12.280 Deficiencies And Refunds.

(A) Deficiencies may be assessed and refunds granted any time within the period provided under ORS 314.410, 314.415, and 317.950. The Administrator may by agreement with the taxfiler extend such time periods to the same extent as provided by statute.

~~____ (B) Notwithstanding subsection (A), if no tax return is filed, the Administrator may determine taxes due under this chapter at any time based on the best information available to the Administrator. Taxes determined under this subsection shall be assessed and subject to penalties and interest from the date the taxes should have been paid as provided in § 12.510 of this in accordance with §§ 12.700 and 12.710. The Administrator shall send notice of the determination and assessment to the person doing business in the county.~~

(~~€~~B) Consistent with ORS 314.410(3), in cases where no tax return has been filed, there shall be no time limit for a notice of deficiency and/or the assessment of taxes, penalty and interest due.

~~____ (C) Notwithstanding subsections (A) and (B), the Administrator is not required to accept any tax return from a taxfiler if:~~

~~____ (1) The Administrator obtains a money judgment against the taxfiler for failure to pay an unpaid account balance due; and~~

~~____ (2) The Administrator or its designee lawfully served the taxfiler with the lawsuit pursuant to the Oregon Rules of Civil Procedure; and~~

~~____ (3) The tax return is for a taxable year that is the subject of the general money judgment; and~~

~~____ (4) The Administrator gave written notice stating that the taxfiler had an outstanding balance due at least 60 days before the Administrator (or its designee) filed a lawsuit for those particular taxable years.~~

Section 9. § 12.290 is amended as follows

12.290 Protests And Appeals.

(A) Any determination by the Administrator may be protested by the taxfiler. Written notice of the protest must be received by the Administrator within 30 days after the notice of determination was mailed or delivered to the taxfiler. The protest shall state the name and address of the taxfiler and an explanation of the grounds for the protest. The Administrator shall respond within 30 days after the protest is filed with the Administrator with either a revised determination or a final determination. The Administrator's determination shall include the

reasons for the determination and state the time and manner for appealing the determination. The time to file a protest or the time for the Administrator's response may be extended by the Administrator, for good cause. Requests for extensions of time must be received prior to the expiration of the original 30-day protest deadline. Written notice shall be given to the taxfiler if the Administrator's deadline is extended.

(B) Any final determination by the Administrator may be appealed by the taxfiler to the appeals board. Written notice of the appeal must be received by the Administrator within 30 days after the final determination was mailed or delivered to the appellant. The notice of appeal shall state the name and address of the appellant and include a copy of the final determination.

(C) ~~(1)~~—Within 90 days after the final determination was mailed or delivered to the taxfiler, the appellant shall file with the appeals board a written statement containing:

~~(1)~~ ~~(a)~~—The reasons the Administrator's determination is incorrect; and

~~(2)~~ ~~(b)~~—What the correct determination should be.

~~(2)~~—Failure to file such a written statement within the time permitted shall be deemed a waiver of any objections, and the appeal shall be dismissed.

(D) Within 150 days after the final determination was mailed or delivered to the taxfiler, the Administrator shall file with the appeals board a written response to the appellant's statement. A copy of the Administrator's response shall be promptly mailed to the address provided by the appellant.

(E) The appellant shall be given not less than 14 days prior written notice of the hearing date and location. The appellant and the Administrator shall have the opportunity to present relevant testimony and oral argument. The appeals board may request such additional written comment and documents as it deems appropriate.

(F) Decisions of the appeals board shall be in writing, state the basis for the decision and be signed by the appeals board chair.

(G) The decision of the appeals board shall be final on the date it is issued and no further administrative appeal shall be provided.

(H) The filing of an appeal with the appeals board shall temporarily suspend the obligation to pay any tax that is the subject of the appeal pending a final decision by the appeals board.

(I) Penalty waiver and/or reduction requests are not subject to the protest/appeal process until the taxfiler receives written notice from the Administrator that the taxfiler's request was either denied or only approved in part. The Administrator shall respond to requests to reduce and/or waive late and/or underpayment penalties within 60 days from the date that the written request is received by the Administrator.

Section 10. § 12.400 is amended as follows

12.400 Exemptions.

To the extent set forth below, the following persons or incomes are exempt from tax requirements imposed by the Business Income Tax Law:

(A) Persons whom the county is prohibited from taxing under the Constitution or laws of the United States or the Constitution or laws of the State of Oregon or County Charter.

(B) Income arising from transactions which the county is prohibited from taxing under the Constitution or the laws of the United States or the Constitution or laws of the State of Oregon or County Charter.

(C) Persons whose gross receipts from all business, both within and without the county, amount to less than \$50,000 (\$25,000 for in any tax years that begin prior to January 1, 2008). The Administrator may demand a statement that the person's gross receipts for any tax year were less than the stated exemption amount for the tax year for which exemption is claimed \$25,000.

(D) Corporations exempt from the State of Oregon Corporation Excise Tax under ORS 317.080, provided that any such corporation subject to the tax on unrelated business income under ORS 317.920 to 317.930 shall pay a tax based solely on such income.

(E) Trusts exempt from federal income tax under Internal Revenue Code Section 501, provided that any exempt trust subject to tax on unrelated business income and certain other activities under Internal Revenue Code Section 501(b) shall be subject to the tax under this chapter based solely on that income.

(F) Any individual whose only business transactions are exclusively limited to the renting or leasing of residential real property dwelling units provided that the beneficial owner rents or leases less than ten total units, regardless of whether the units are located inside or outside of the County. For purposes of this subsection, payments to foster care and other service providers shall be considered payments for "services" and not for "rent". If a building contains more than one residential living quarter, the term "dwelling unit" refers to each separate living quarter. This exemption does not apply if any income is recognized from the sale of residential property following activities:

~~_____ (1) Sales, exchanges or involuntary conversions of real property not held for sale in the ordinary course of a trade or business, unless the real property is used in the trade or business in connection with the production of income; or~~

~~_____ (2) The sale of personal property acquired for household or other personal use by the seller; or~~

~~_____ (3) (a) Interest and dividend income earned from investments if the income is not created in the course of or related to the taxpayer's business activities; or~~

~~_____ (b) Gains or losses incurred from the sale of assets which are not a part of a trade or business; or~~

~~_____ (4) The renting or leasing of residential real property, if the beneficial owner of such real property does not rent or lease more than nine dwelling units, at least one of which is within the county.~~

~~_____ (G) Income of an individual from:~~

~~_____ (1) Sales, exchanges or involuntary conversions of a primary or secondary residence;~~

~~_____ (2) Sale of personal property acquired for household or other personal use by the seller;~~

~~_____ (3) Interest and dividend income earned from investments, if the income is not created in the course of or related to the taxfiler's business activities; and~~

~~_____ (4) Gains and losses incurred from the sale of investments (other than real property) that are not a part of a business.~~

(GH) Any person whose only business transactions are exclusively limited to the following activities:

(1) Raising, harvesting and selling of the person's own crops, or the feeding, breeding, management and sale of the person's own livestock, poultry, furbearing animals or honeybees, or sale of the produce thereof, or any other agricultural, horticultural or animal husbandry activity carried on by any person on the person's own behalf and not for others, or dairying and the sale of dairy products to processors. This exemption shall not apply if, in addition to the farm activities described in this subsection, the person does any processing of the person's own farm products which changes their character or form, or the person's business includes the handling, preparation, storage, processing or marketing of farm products raised or produced by others; or the processing of milk or milk products whether produced by said person or by others for retail or wholesale distribution.

(2) Operating within a permanent structure a display space, booth or table for selling or displaying merchandise by an affiliated participant at any trade show, convention, festival, fair, circus, market, flea market, swap meet or similar event for less than 14 days in any tax year.

Section 11. § 12.500 is amended as follows

12.500 Imposition And Rate Of Tax.

(A) Except as otherwise provided in this chapter, a tax is imposed upon each person doing business within the county equal to 1.45% of the net income from the business within the county effective with tax years beginning on or after January 1, 1993. For tax years beginning on or after January 1, 2008 each taxfiler not otherwise exempt shall determine their tax at the rate established in this section, provided that each shall pay at least a minimum tax of \$100.00.

(B) The payment of a tax required hereunder and the acceptance of such tax shall not entitle a taxfiler to carry on any business not in compliance with all the requirements of this code and all other applicable laws.

(C) For the business year beginning on or after January 1, 1998, if the tax imposed by this section exceeds \$100, each person doing business within Multnomah County shall pay, in addition, a Temporary Education Surcharge equal to one half percent (.50%) of the net income from the business within the County. This surcharge shall be in effect only for 1998 and shall not apply to business years beginning on or after January 1, 1999.

(D) The receipts from the surcharge imposed by subsection (C) shall be used only to benefit public schools in Multnomah County. Receipts from the Temporary Educational BIT surcharge shall only be used to maintain or reduce class size by preventing teacher layoffs in FY 1998-99. The public school districts with projected budget shortfalls in FY 98-99 shall only spend surcharge revenues to pay for salaries of teacher positions or other state certified personnel, which would otherwise be eliminated. To be eligible for BIT surcharge funds, school districts with projected budget shortfalls in FY 98-99 shall submit a list of positions for state certified positions subject to elimination from the budget and their accompanying salary, to Multnomah County no later than May 30, 1998. Districts without budget shortfalls in FY 98-99 shall submit a list of additional teaching positions and other staff certified positions and materials directly related to instruction. Multnomah County will allocate the BIT surcharge revenues to each public school to pay for teacher positions or other state certified positions, based upon the list submitted by each school district.

(E) The Temporary Education Surcharge receipts shall be distributed to every public school district in Multnomah County according to a formula approved by the Board of County Commissioners.

Section 12. § 12.550 is amended as follows

12.550 Presumptive Tax.

(A) If a person fails to file a return, a rebuttable presumption shall exist that the tax payable amounts to \$500 for every tax year for which a return has not been filed.

(B) Nothing in this section shall prevent the Administrator from assessing, ~~under § 12.280(B)~~ a tax due which is less than or greater than \$500 per tax year.

(C) If the taxfiler filed a tax return the previous tax year, then presumptive taxes assessed under this subsection shall be considered a tax return. Presumptive taxes assessed

under this subsection shall be considered filed documents and shall be subject to the time limitations for deficiencies and refunds as described in subsection 12.280.

(D) Taxes determined under this subsection shall be assessed and subject to penalties and interest from the date the taxes should have been paid as provided in subsection 12.510 in accordance with subsections 12.700 and 12.710. The Administrator shall send notice of the determination and assessment to the person doing business in the County.

Section 13. § 12.600 is amended as follows

12.600 Income Determinations.

(A) *Owners compensation deduction.* **OWNERS COMPENSATION DEDUCTION** is defined as the additional deduction allowed in subsections (B), (C) and (D) below.

(1) For tax years beginning prior to January 1, 1999, the owner's compensation deduction as defined in this section cannot exceed \$50,000 per owner, as defined in this section.

(2) For tax years beginning on or after January 1, 1999, the owners compensation deduction will be indexed by the Consumer Price Index - All Urban Consumers (CPI-U) U.S. City Average as published by the U.S. Department of Labor, Bureau of Labor Statistics, using the September to September index, not seasonally adjusted (unadjusted index). The initial index will be the September 1998 to September 1999 index. The Administrator will determine the exact deduction amount and publish the amount in written policy and included on forms. Any increase or decrease under this subsection which is not a multiple of \$500 shall be rounded up or down to the next lowest multiple of \$500 at the Administrator's discretion.

(3) For tax years beginning on or after January 1, 2008, the owners compensation deduction cannot exceed \$80,000 plus CPI-U for September 2007 to September 2008 per owner as defined in Sections (B), (C) and (D) below.

(4) For tax years beginning on or after January 1, 2009, the owners compensation deduction will be indexed as described in (2) above.

(B) *Sole proprietorship.* In determining income, no deductions shall be allowed for any compensation for services rendered by, or interest paid to, owners. However, 75% of income determined without such deductions shall be allowed as an additional deduction, not to exceed the amount per owner as determined in subsection (A) above.

(C) *Partnerships.* In determining income, no deduction shall be allowed for any compensation for services rendered by, or interest paid to, owners of partnerships, limited partnerships, limited liability companies, limited liability partnerships or family limited partnerships. Guaranteed payments to partners or members shall be deemed compensation paid to owners for services rendered. However:

(1) For general partners or members, 75% of income determined without such deductions shall be allowed as an additional deduction, not to exceed the amount per general partner or member as determined in subsection (A) above.

(2) For limited partners or members of limited liability corporations who are deemed partners by administrative rule or policy, 75% of income determined without such deductions shall be allowed as an additional deduction, not to exceed the lesser of actual compensation and interest paid or the amount determined in subsection (A) above per compensated limited partner.

(D) *Corporations.* In determining income, no deduction shall be allowed for any compensation for services rendered by, or interest paid to, controlling shareholders of any corporation, including, but not limited to C and S corporations and any other entity electing treatment as a corporation, either C or S. However, 75% of the corporation's income, determined without deduction of compensation or interest, shall be allowed as a deduction in addition to any other allowable deductions, not to exceed the lesser of the actual compensation and interest paid or the amount for each controlling shareholder as determined in subsection (A) above.

(1) For purposes of this subsection, to calculate the compensation for services rendered by or interest paid to controlling shareholders that must be added back to income, wages, salaries, fees, or interest paid to all persons meeting the definition of a controlling shareholder, must be included.

(2) For purposes of this subsection, in determining the number of controlling shareholders, a controlling shareholder and that person's spouse, parents and children count as one owner, unless such spouse, parent or child individually own more than 5% ownership of outstanding stock or securities in their own name. In that case, each spouse, parent or child who owns more than 5% of stock shall be deemed to be an additional controlling shareholder.

(3) For purposes of this subsection (C), joint ownership of outstanding stock or securities shall not be considered separate ownership.

(E) *Estates and trusts.* In determining income for estates and trusts, income shall be measured before distribution of profits to beneficiaries. No additional deduction shall be allowed.

(F) *Nonbusiness income.* In determining income under this section, an allocation shall be allowed for nonbusiness income as reported to the State of Oregon. However, income treated as nonbusiness income for State of Oregon tax purposes may not necessarily be defined as nonbusiness income under the Business Income Tax Law. Interest and dividend income, rental income or losses from real and personal business property, and gains or losses on sales of property or investments owned by a trade or business shall be treated as business income for purposes of the Business Income Tax Law. Income derived from non-unitary business functions reported at the state level may be considered nonbusiness income. Non-unitary income will not be recognized at an intrastate level. The taxfiler shall have the burden of showing that income is nonbusiness income.

(G) *Tax based on or measured by net income.* In determining income, no deduction shall be allowed for taxes based on or measured by net income. No deduction shall be allowed for the federal built-in gains tax.

(H) *Ordinary gain or loss.* In determining income, gain or loss from the sale, exchange or involuntary conversion of real property or tangible and intangible personal property not exempt under § 12.400(FG) and § 12.400(H) shall be included as ordinary gain or loss.

(I) *Net operating loss.* In determining income, a deduction shall be allowed equal to the aggregate of the net operating losses incurred in prior years, not to exceed 75% of the income determined for the current tax year before this deduction but after all other deductions from income allowed by this section and apportioned for business activity both within and without the county.

(1) When the operations of the taxfiler from doing business both within and without the county result in a net operating loss, such loss shall be apportioned in the same manner as the net income under § 12.600. However, in no case shall a net operating loss be carried forward from any tax year during which the taxfiler conducted no business within the county or the taxfiler was otherwise exempt from tax filing requirements.

(2) In computing the net operating loss for any tax year, the net operating loss of a prior tax year shall not be allowed as a deduction.

(3) In computing the net operating loss for any tax year, no compensation allowance deduction shall be allowed to increase the net operating loss. **COMPENSATION ALLOWANCE DEDUCTION** is defined as the additional deduction allowed by subsection (A).

(4) The net operating loss of the earliest tax year available shall be exhausted before a net operating loss from a later tax year may be deducted.

(5) The net operating loss in any tax year shall be allowed as a deduction in any of the five succeeding tax years until used or expired. Any partial tax year shall be treated the same as a full tax year in determining the appropriate carry-forward period.

Section 14. § 12.700 is amended as follows

12.700 Penalty.

(A) (1) A penalty shall be assessed if a person:

(1) (a) Fails to file a tax return or extension request at the time required under §§ 12.510(A) or 12.620(A); or

(b) Fails to pay a tax when due.

(2) The penalty under subsection (A) shall be calculated as:

(a) Five percent of the total tax liability if the failure is for a period less than four months;

(b) An additional penalty of 20% of the total tax liability if the failure is for a period of four months or more; and

(c) An additional penalty of 100% of the total tax liability of all tax years if the failure to file is for three or more consecutive tax years.

(B) (1) A penalty shall be assessed if a person who has filed an extension request:

(+)(a) Fails to file a tax return by the extended due date; or

(b) Fails to pay the tax liability by the extended due date.

(2) The penalty under subsection (B) shall be calculated as:

(a) Five percent of the total tax liability if the failure is for a period of less than four months; and

(b) An additional penalty of 20% of the total tax liability if the failure is for a period of four months or more.

(C) (1) A penalty shall be assessed if a person:

(+)(a) Fails to pay at least 90% of the total tax liability by the original due date; or

(b) Fails to pay at least 100% of the prior year's total tax liability by the original due date.

(2) The penalty under subsection (C) shall be calculated as:

~~_____ (a) Five percent 5% of the tax underpayment, but not less than \$5. if the failure is for a period less than four months; and~~

~~_____ (b) An additional penalty of 20% of the tax underpayment if the failure is for a period of four months or more.~~

(D) The Administrator may impose a civil penalty of up to \$500 for each of the following violations of this chapter:

(1) Failure to file any tax return within ~~90~~60 days of the Administrator's original written notice to file;

(2) Failure to pay any tax within ~~90~~60 days of the Administrator's original written notice for payment; or

(3) Failure to provide documents as required by §§ 12.260 within ~~90~~60 days of the Administrator's original written notice to provide documents.

(E) The Administrator may impose a civil penalty under subsection (D) only if the Administrator gave notice of the potential for assessment of civil penalties for failure to comply or respond in the original written notice.

(F) The Administrator may waive or reduce any penalty determined under subsections (A) through (D) for good cause, according to and consistent with written policies.

Section 15. § 12.710 is amended as follows

12.710 Interest.

(A) Interest shall be collected on any unpaid tax at the rate of .833% simple interest per month or fraction thereof (10% per annum), computed from the original due date of the tax to the fifteenth day of the month following the date of payment.

(B) (1) Interest shall be collected on any unpaid or underpaid quarterly estimated payment required by §§ 12.520 and 12.530 at the rate of .833% simple interest per month or fraction thereof (10% per annum), computed from the due date of each quarterly estimated payment to the original due date of the tax return to which the estimated payments apply.

(C) (2) Notwithstanding subsection (B)(1), there shall be no interest on underpayment of quarterly estimated payments if:

(1) (a) The total tax liability of the prior tax year was less than \$1,000;

(2) (b) An amount equal to at least 90% of the total tax liability for the current tax year was paid in accordance with § 12.530; or

(3) (c) An amount equal to at least 100% of the prior year's total tax liability was paid in accordance with § 12.530.

(D) (3) For purposes of subsection (B)(1), the amount of underpayment is determined by comparing ~~the 90% of the current total tax liability amount to quarterly estimated payments made prior to the original due date of the tax return.~~ However, if 100% of the prior year's total tax liability is paid to the Administrator by the due date of the fourth quarterly payment, the Administrator may use the prior year's tax liability if doing so will reduce the amount of interest owed.

~~—— (C) If a person fails to file a tax return on the prescribed date, or any extension thereof granted under § 12.510(B), the Administrator may determine the tax due based on the best information available to the Administrator. If the Administrator determines the tax due under this~~

~~subsection, the Administrator shall assess appropriate penalties and interest and shall send notice to such person of the determination and assessment.~~

(DE) For purposes of subsection (A), the amount of tax due on the tax return shall be reduced by the amount of any tax payment made on or before the date for payment of the tax in accordance with § 12.510(A) or 12.530.

(EF) Interest at the rate specified in subsection (A) shall accrue from the original due date without regard to any extension of the filing date.

(FG) Any interest amounts properly assessed in accordance with this section may not be waived or reduced by the Administrator, unless specifically provided for by written policy.

Section 16. § 12.715 is amended as follows

12.715 Payments Applied.

Taxes received shall first be applied to any penalty accrued, then to interest accrued, then to taxes due, unless the Administrator determines in accordance with its written policies that a more equitable method exists for a particular taxfiler's account.

Section 17. § 12.720 is amended as follows

12.720 Interest On Refunds.

When, under a provision of the Business Income Tax Law, taxfilers are entitled to a refund of a portion or all of a tax paid to the Administrator, they shall receive simple interest on such amount at the rate specified in § 12.710(A), subject to the following:

(A) Any overpayments shall be refunded with interest for each month or fraction thereof for a period beginning four months after the later of:

_____ (1) the due date of the tax return;

_____ (2) the date the tax return was filed or the refund was otherwise requested; or

_____ (3) the date the tax was paid, whichever is later,

to the date of the refund; and

~~_____ (B) Any overpayments of estimated tax shall be refunded with interest for each month or fraction thereof for the period beginning four months after the date the final return was filed.~~

(EB) Any overpayments of taxes that are the result of an amended return being filed shall be refunded with interest for each month or fraction thereof for the period beginning four

months after the date the taxfiler filed the amended return ~~was filed~~. This subsection shall apply to tax returns~~applications~~ that are amended due to a change to the federal, state or business income tax return.

Section 18. § 12.730 is amended as follows

12.730 Criminal Penalties.

Violation of §§ 12.230 or 12.240 is punishable, upon conviction thereof, by a fine not exceeding \$1,000~~500~~ or by imprisonment for a period not exceeding ~~12-six~~ months, or by both fine and imprisonment. In addition, any county employee convicted for violation of §§ 12.230 or 12.240 shall be dismissed from employment and shall be barred from employment for a period of five years thereafter. Any agent of the county shall, upon conviction, be ineligible for participation in any county contract for a period of five years thereafter.

Section 19. § 12.840 is renumbered as follows

12.840-990 Participation Of Cities.

To facilitate a unified system of collection and allocation of all county and municipal taxes upon business net income within the county, any city the territory of which is in whole or in part within the county may, if authorized by its governing body, participate under and share in the revenue derived from this chapter, upon such terms and conditions as the county and city may agree by written contract.

Section 20. § 12.850 is renumbered as follows

12. 850-995 Former Regulations Superseded By This Subchapter; Exceptions.

Effective for tax years beginning on or after January 1, 1993, '90 MCC Chapter 5.70 shall be superseded and given no effect until this chapter is repealed or otherwise ceases to be effective. For tax years ending on or before December 31, 1992, all determinations of obligations and responsibilities required of any persons under '90 MCC Chapter 5.70, made on or before December 31, 1993 shall remain binding upon those persons. However, on and after January 1, 1994, this chapter [formerly §§ 11.500 et seq.] shall apply to all determinations of obligations and responsibilities for tax years ending on or before December 31, 1992 with the exceptions of:

- (A) Determination of income under '90 MCC 5.70.015;
- (B) Treatment of payments to owners or controlling shareholders under '90 MCC 5.70.025;
- (C) Net operating loss deduction under '90 MCC 5.70.030;

- (D) Ordinary gain or loss under '90 MCC 5.70.035;
- (E) Rate of tax under '90 MCC 5.70.045;
- (F) Apportionment of income under '90 MCC 5.70.050;
- (G) Partnerships, S corporations, estates and trusts under '90 MCC 5.70.055;
- (H) Exemptions under '90 MCC 5.70.060;
- (I) State laws incorporated by reference under '90 MCC 5.70.075 (except that the City of Portland, Revenue Bureau of Licenses shall replace any references to the state Department of Revenue as the Administrator of the Tax.);
- (J) Amendments under '90 MCC 5.70.110.

Section 21. § 12.845 is added as follows

12.845 Frivolous Filing.

A \$500.00 penalty shall be assessed if a taxfiler takes a "frivolous position" in respect to preparing the taxfiler's tax return. A tax return is considered frivolous if a taxfiler does not provide information on which the substantial correctness of the self-assessment may be judged or if the tax return contains information that on its face indicates that the self-assessment is substantially incorrect. Examples of "frivolous positions" as provided in Oregon Administrative Rule 150-316.992(5) are adopted by direct reference.

Section 22. § 12.855 is added as follows

12.845 Hacking.

(A) Definitions. As used in this section, the following definitions apply:

ADMINISTRATOR'S COMPUTER DATABASE. Computer application(s) used by the Administrator to calculate and store business and financial data collected under the authority granted by the Business Income Tax Law.

LOSS. Any reasonable cost incurred by the City of Portland, including but not limited to the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service.

DAMAGE. Any impairment to the integrity or availability of data, a program, a system, or information.

(B) Any individual who intentionally accesses the Administrator's computer database without authorization shall be fined:

(1) \$500 if the individual acquires any information regarding any business account found in the database;

(2) \$1,000 or the cost of the loss (whichever is greater) if the individual uses or attempts to use the acquired information for financial gain of any kind; or

(3) \$5,000 or the cost of the loss (whichever is greater) if the individual causes the transmission of a program, information, code, or command to the Administrator's computer database, and, as a result of such conduct, causes damage to the database.

FIRST READING:

December 13, 2007

SECOND READING AND ADOPTION:

December 20, 2007



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By *Stephanie E. Duvall*

Stephanie E. Duvall, Assistant County Attorney

SUBMITTED BY:

Mindy Harris, Chief Financial Officer



MULTNOMAH COUNTY

AGENDA PLACEMENT REQUEST (long form)

APPROVED : MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # R-6 DATE 12-20-07
ANA KARNES, ASST BOARD CLERK

Board Clerk Use Only

Meeting Date: 12/20/07
Agenda Item #: R-6
Est. Start Time: 10:15 AM
Date Submitted: 12/12/07

BUDGET MODIFICATION: MCSO - 05

Agenda Title: Budget Modification MCSO-05 Appropriating \$37,035 in Methamphetamine Enforcement Program Grant Funding

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

Requested Meeting Date:	<u>December 20, 2007</u>	Amount of Time Needed:	<u>5 Minutes</u>
Department:	<u>Sheriff's Office</u>	Division:	<u>Law Enforcement</u>
Contact(s):	<u>Wanda Yantis, Budget Manager</u>		
Phone:	<u>503-988-4455</u>	Ext.	<u>84455</u>
		I/O Address:	<u>503/350</u>
Presenter(s):	<u>Capt. Monte Reiser and Wanda Yantis</u>		

General Information

1. What action are you requesting from the Board?

The Sheriff's Office is requesting approval of Budget Modification MCSO-05 to appropriate \$37,035 in Methamphetamine Enforcement Program Grant Funding to our Enforcement Division Budget.

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.

According to 2006 National Drug Threat Survey data, 92.2% of law enforcement agencies in the Pacific Region report that methamphetamine is the greatest drug threat in their jurisdictions, a higher percentage than for any other region in the country.

The Criminal Justice Services Division (CJSD) of the Oregon State Police announced the availability of \$400,000 in one-time only Emergency Funds to be competitively distributed to local law enforcement agencies to support programs to reduce the manufacture and/or distribution of methamphetamine.

The intent of this grant is to fund activities that enhance current efforts to disrupt and dismantle clandestine labs and drug trafficking organizations that manufacture and distribute methamphetamine, including precursor trafficking. The intended objectives are to investigate methamphetamine manufacturers and traffickers who produce or sell methamphetamine and methamphetamine precursors; to arrest and incarcerate methamphetamine manufacturers and traffickers; to remove children from drug endangering environments; and to use state and/or federal law to identify and seize assets related to the sale and distribution of methamphetamine.

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

This will increase the Enforcement Division's revenue by \$37,035 in the Federal/State Fund. The funds also covers 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.

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?**

This is an increase of revenue of \$37,035 in the Federal/State Fund for The Sheriff's Office Enforcement Division due to the Methamphetamine Enforcement Program Grant.

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

- The Enforcement Division will increase their Federal/State budget by \$37,037
- Increase Dept Indirect by \$1,683
- Increase Central Indirect by \$791
- Increase Risk Fund by \$982

- **What do the changes accomplish?**

This is an increase of revenue of \$37,035 in the Federal/State Fund for The Sheriff's Office Enforcement Division due to the Methamphetamine Enforcement Program Grant.

- **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?**

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 one-time-only revenue. When the funding is exhausted, the program ends. This is tied to program offer 60045A&B MCSO Special Investigations in the FY 08 Budget.

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

FY 08

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

Our participation will end once the funding ends.

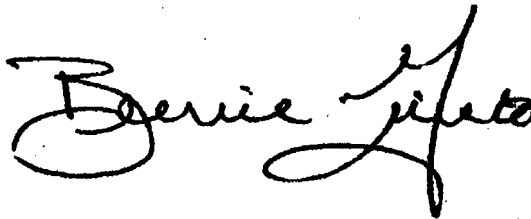
<p><i>NOTE: If a Budget Modification or a Contingency Request attach a Budget Modification Expense & Revenues Worksheet and/or a Budget Modification Personnel Worksheet.</i></p>

ATTACHMENT B

BUDGET MODIFICATION: MCSO - 05

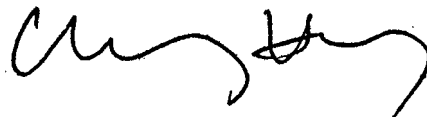
Required Signatures

**Elected Official or
Department/
Agency Director:**



Date: 12-12-07

Budget Analyst:



Date: 12-14-07

Budget Modification ID: **MCSO-05****EXPENDITURES & REVENUES**

Please show an increase in revenue as a negative value and a decrease as a positive value for consistency with MERLIN.

Budget/Fiscal Year: 2008

Line No.	Fund Center	Fund Code	Func. Area	Accounting Unit			Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
				Internal Order	Cost Center	WBS Element						
1	60-50	32255				SOENF.METH.PERS	50180		(17,035)	(17,035)		IG-Direct State
2	60-50	32255				SOENF.METH.PERS	60110		10,913	10,913		Overtime
3	60-50	32255				SOENF.METH.PERS	60130		4,002	4,002		Salary-Related
4	60-50	32255				SOENF.METH.PERS	60140		982	982		Insurance
5	60-50	32255				SOENF.METH.PERS	60350		364	364		Central Indirect
6	60-50	32255				SOENF.METH.PERS	60355		774	774		Dept Indirect
7									0			
8	60-50	32255				SOENF.METH.CONF	50180		(20,000)	(20,000)		IG-Direct State
9	60-50	32255				SOENF.METH.CONF	60170		18,664	18,664		Professional Services
10	60-50	32255				SOENF.METH.CONF	60350		427	427		Central Indirect
11	60-50	32255				SOENF.METH.CONF	60355		909	909		Dept Indirect
12									0			
13	60-00	1000			604020		50370		(1,683)	(1,683)		Dept Indirect
14	60-00	1000			604020		60240		1,683	1,683		Supplies
15									0			
16	19	1000			9500001000		50310		792	(791)		Indirect Revenue
17	19	1000			9500001000		60470		791	791		Contingency
18									0			
19	72-10	3500			705210		50316		(982)	(982)		Risk Fund
20	72-10	3500			705210		60330		982	982		Risk Fund
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

**OREGON STATE POLICE
CRIMINAL JUSTICE SERVICES DIVISION
EMERGENCY FUND**

AWARD CONDITIONS AND CERTIFICATIONS

PROGRAM NAME:	Special Investigations Unit (SIU)	AWARD NO:	EB-06-511
AWARDEE:	Multnomah County Sheriff's Office	FY 2007 AWARD:	\$37,035
ADDRESS:	12240 NE Glisan Portland, Oregon 97230	AWARD PERIOD:	7/1/07 thru 6/30/08
PROGRAM CONTACT:	Cpt. Monte Reiser monte.reiser@mcsso.us	TELEPHONE:	(503) 251-2515
		FAX:	(503) 251-2442
FISCAL CONTACT:	Sharon Lowell sharon.lowell@mcsso.us	TELEPHONE:	(503) 988-4433

BUDGET

REVENUE

Emergency Funds	\$37,035
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TOTAL REVENUE: \$37,035

EXPENDITURES

Personnel	\$17,035
Confidential Funds	\$20,000

TOTAL EXPENDITURES: \$37,035

This document along with the terms and conditions and award application attached hereto and any other document referenced, constitutes an agreement between the Criminal Justice Services Division (CJSD) of the Oregon State Police and the Awardee. No waiver, consent, modification or change of terms of this Agreement shall be binding unless agreed to in writing and signed by both the Awardee and CJSD. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The Awardee, by signature of its authorized representative, hereby acknowledges that he/she has read this Agreement, understands it, and agrees to be bound by its terms and conditions (including all references to other documents). Failure to comply with this Agreement and with applicable state and federal rules and guidelines may result in the withholding of reimbursement, the termination or suspension of the Agreement, denial of future awards, and/or damages to CJSD.

TERMS AND CONDITIONS

I. CONDITIONS OF AWARD

- A. The Awardee agrees to operate the program as described in the application and to expend funds in accordance with the approved budget unless the Awardee receives prior written approval by CJSD to modify the program or budget. CJSD may withhold funds for any expenditure not within the approved budget or in excess of amounts approved by CJSD. Failure of the Awardee to operate the program in accordance with the written agreed upon objectives contained in the award application and budget will be grounds for immediate suspension and/or termination of the award Agreement.
- B. Maintenance, Retention and Access to Records.
1. Maintenance and Retention of Records. The Awardee agrees to maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and the pertinent Office of Management and Budget (OMB) Circulars A-87, A-102, A-110, A-122, A-133. All financial records, supporting documents, statistical records and all other records pertinent to this award or agreements under this award shall be retained by the Awardee for a minimum of five years for purposes of State of Oregon audit.
 2. Access to Records. CJSD or Oregon Secretary of State shall have the right of access to any pertinent books, documents, papers, or other records of Awardee and any contractors or subcontractors of Awardee, which are pertinent to the award, in order to make audits, examinations, excerpts, and transcripts. The right of access is not limited to the required retention period but shall last as long as the records are retained.
- C. Funding.
1. Matching Funds. **This Award does not require matching funds.**
- D. Reports. **Failure of the Awardee to submit the required program or financial reports, or to resolve program or financial issues may result in the suspension of award payments and/or termination of the award Agreement.**
1. Progress Reports. The Awardee agrees to submit a report each quarter on its progress in meeting each of its agreed upon goals and objectives. The narrative progress reports should address specific information regarding the activities carried out during the reporting period. Progress reports are due **October 31, 2007, January 31, 2008, April 30, 2008, and July 31, 2008.** **Any progress report that is outstanding for more than one month past the due date may cause the suspension and/or termination of the award.** Awardee must receive prior written approval from CJSD to extend a progress report requirement past its due date.
 2. Financial Reimbursement Reports.
 - a. In order to receive reimbursement, the Awardee agrees to submit the original signed Request for Reimbursement (RFR) which includes **supporting documentation for all award expenditures.** RFRs must be received no later than **October 31, 2007, January 31, 2008, April 30, 2008, and July 31, 2008.** Reimbursements for expenses will be withheld if progress reports are not submitted by the specified dates or are incomplete. **Any RFR that is outstanding for more than one month past the due date may cause the suspension and/or termination of the award.** Awardee must receive prior written approval from CJSD to extend an RFR requirement past its due date.
 - b. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the times, dates, and places of travel, and the actual expenses or authorized rates incurred.

- c. When requesting reimbursement for equipment costing over \$5,000, the Awardee agrees to provide a description of the equipment, purchase price, date of purchase, and identifying numbers if any.
- d. Reimbursements will only be made for actual expenses incurred during the award period. The Awardee agrees that no award funds may be used for expenses incurred before **July 1, 2007 or after June 30, 2008**.
- e. Awardee shall be accountable for and shall repay any overpayment or any other breach of award that results in a debt owed to the State of Oregon. CJSD shall apply interest, penalties, and administrative costs to a delinquent debt owed by a debtor pursuant to the Federal Claims Collection Standards and OMB Circular A-129.

E. Indemnification. The Awardee shall, to the extent permitted by the Oregon Constitution and by the Oregon Tort Claims Act, defend, save, hold harmless, and indemnify the State of Oregon and CJSD, their officers, employees, agents, and members from all claims, suits and actions of whatsoever nature resulting from or arising out of the activities of Awardee, its officers, employees, subcontractors, or agents under this award.

Awardee shall require any of its contractors or subcontractors to defend, save, hold harmless and indemnify the State of Oregon, Criminal Justice Services Division, and the Oregon State Police, their officers, employees, agents, and members, from all claims, suits or actions of whatsoever nature resulting from or arising out of the activities of subcontractor under or pursuant to this award.

Awardee shall, if liability insurance is required of any of its contractors or subcontractors, also require such contractors or subcontractors to provide that the State of Oregon, Criminal Justice Services Division, and the Oregon State Police and their officers, employees and members are Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this award.

F. Copyright and Patents.

- 1. Copyright. If this Agreement or any program funded by this Agreement results in a copyright, CJSD reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes, the work or the copyright to any work developed under this Agreement and any rights of copyright to which Awardee, or its contractor or subcontractor, purchases ownership with award support.
- 2. Patent. If this Agreement or any program funded by this Agreement results in the production of patentable items, patent rights, processes, or inventions, the Awardee or any of its contractors or subcontractors shall immediately notify CJSD. The CJSD will provide the Awardee with further instruction on whether protection on the item will be sought and how the rights in the item will be allocated and administered in order to protect the public interest, in accordance with federal guidelines.

G. No Implied Waiver, Cumulative Remedies. The failure of Awardor to exercise, and any delay in exercising any right, power, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

H. Governing Law; Venue; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively, "Claim") between Awardor (and/or any other agency or department of the State of Oregon) and Awardee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for the State of Oregon; provided, however, if the Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District

of Oregon. Awardee, By Execution Of This Agreement, Hereby Consents To The In Personam Jurisdiction Of Said Courts.

- I. Notices. Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same by registered or certified mail, postage prepaid to Awardee or Awardor at the address or number set forth on page 1 of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.
- J. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Awardor, Awardee, and their respective successors and assigns, except that Awardee may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of Awardor.
- K. Survival. All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: Section I.B (Maintenance, Retention and Access to Records); Section I.D (Reports); and Section I.E (Indemnification).
- L. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- M. Relationship of Parties. The parties agree and acknowledge that their relationship is that of independent contracting parties and neither party hereto shall be deemed an agent, partner, joint venturer or related entity of the other by reason of this Agreement.

II. Awardee Compliance and Certifications

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion. The Awardee certifies by accepting award funds that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency. (This certification is required by regulations published May 26, 1988, implementing Executive Order 12549, Debarment and Suspension, 28 CFR Part 69 and 28 CFR Part 67.)
- B. Compliance with Applicable Law. The Awardee agrees to comply with all applicable laws, regulations, and guidelines of the State of Oregon, the Federal Government and CJSJSD in the performance of this Agreement, including but not limited to:
 - 1. The provisions of 28 CFR applicable to awards and cooperative agreements including Part 18, Administrative Review Procedure; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Non-Discrimination/Equal Employment Opportunity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 63, Floodplain Management and Wetland Protection Procedures, and Federal laws or regulations applicable to Federal assistance programs.
 - 2. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646).

3. Section 102(a) of the Flood Disaster Protection Act of 1973, P.L. 93-234, 87 Stat.97, approved December 31, 1976.
4. Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 USC 569a-1 et seq.)
5. National Environmental Policy Act of 1969, 42 USC 4321 et seq.
6. Flood Disaster Protection Act of 1973, 42 USC 4001 et seq.
7. Clean Air Act, 42 USC 7401 et seq.
8. Clean Water Act, 33 USC 1368 et seq.
9. Federal Water Pollution Control Act of 1948, as amended, 33 USC 1251 et seq.
10. Safe Drinking Water Act of 1974, 42 USC 300f et seq.
11. Endangered Species Act of 1973, 16 USC 1531 et seq.
12. Wild and Scenic Rivers Act of 1968, as amended, 16 USC 1271 et seq.
13. Historical and Archaeological Data Preservation Act of 1960, as amended, 16 USC 469 et seq.
14. Coastal Zone Management Act of 1972, 16 USC 1451 et seq.
15. Coastal Barrier Resources Act of 1982, 16 USC 3501 et seq.
16. Indian Self-Determination Act, 25 USC 450f.
17. Hatch Political Activity Act of 1940, as amended, 5 USC 1501 et seq.
18. Animal Welfare Act of 1970, 7 USC 2131 et seq.
19. Demonstration Cities and Metropolitan Development Act of 1966, 42 USC 3301 et seq.
20. Federal Fair Labor Standards Act of 1938 (as appropriate), as amended, 29 USC 201 et seq.

C. Standard Assurances and Certifications Regarding Lobbying. The Anti-Lobbying Act, 18 U.S.C. § 1913, was amended to expand significantly the restriction on use of appropriated funding for lobbying. This expansion also makes the anti-lobbying restrictions enforceable via large civil penalties, with civil fines between \$10,000 and \$100,000 per each individual occurrence of lobbying activity. These restrictions are in addition to the anti-lobbying and lobbying disclosure restrictions imposed by 31 U.S.C. § 1352. The Office of Management and Budget (OMB) is currently in the process of amending the OMB cost circulars and the common rule (codified at 28 C.F.R. part 69 for DOJ awardees) to reflect these modifications. However, in the interest of full disclosure, all applicants must understand that no federally-appropriated funding made available under this award program may be used, either directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation, or policy, at any level of government, without the express approval of the U.S. Department of Justice. Any violation of this prohibition is subject to a minimum \$10,000 fine for each occurrence. This prohibition applies to all activity, even if currently allowed within the parameters of the existing OMB circulars.

D. Certification of Non-discrimination.

1. The Awardee, and all its contractors and subcontractors, certifies that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded under this Agreement on the basis of race, color, age, religion, national origin, handicap, or gender. The Awardee, and all its contractors and subcontractors, assures compliance with the following laws:
 - a. Non-discrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended;
 - b. Title IV of the Civil Rights Act of 1964, as amended;

- c. Section 504 of the Rehabilitation Act of 1973, as amended;
 - d. Title II of the Americans with Disabilities Act (ADA) of 1990,
 - e. Title IX of the Education Amendments of 1972;
 - f. The Age Discrimination Act of 1975;
 - g. The Department of Justice Nondiscrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G;
 - h. The Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39.
2. In the event that a Federal or State court or administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, age, religion, national origin, handicap or gender against the Awardee or any of its contractors or subcontractors, the Awardee or any of its contractors or subcontractors will forward a copy of the finding to the Criminal Justice Services Division (CJSD).

E. Civil Rights Compliance.

- 1. All recipients of federal award funds are required, and Awardee agrees, to comply with nondiscrimination requirements of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq. (prohibiting discrimination in programs or activities on the basis of race, color, and national origin); Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3789d(c)(1) (prohibiting discrimination in employment practices or in programs and activities on the basis of race, color, religion, national origin, and gender); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination in employment practices or in programs and activities on the basis of disability); Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 (prohibiting discrimination in services, programs, and activities on the basis of disability); The Age Discrimination Act of 1975, 42 U.S.C. § 6101-07 (prohibiting discrimination in programs and activities on the basis of age); and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (prohibiting discrimination in educational programs or activities on the basis of gender).
- 2. Services to Limited-English-Proficient (LEP) Persons
National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI and the Safe Streets Act, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including interpretation and translation services, where necessary. Awardees are encouraged to consider the need for language services for LEP persons served or encountered both in developing their proposals and budgets and in conducting their programs and activities. Reasonable costs associated with providing meaningful access for LEP individuals are considered allowable program costs. The U.S. Department of Justice has issued guidance for awardees to assist them in complying with Title VI requirements. The guidance document can be accessed on the Internet at www.lep.gov.

F. Certification Regarding Drug Free Workplace Requirements. Awardee certifies that it will provide a drug-free workplace by:

- 1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Awardee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- 2. Establishing a drug-free awareness program to inform employees about:

- a. The dangers of drug abuse in the workplace;
 - b. The Awardee's policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- 3. Requiring that each employee engaged in the performance of the award be given a copy of the employer's statement required by paragraph (a).
- 4. Notifying the employee that, as a condition of employment under the award, the employee will:
 - a. Abide by the terms of the statement; and
 - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction.
- 5. Notifying the Awardee within ten days after receiving notice from an employee or otherwise receiving actual notice of such conviction.
- 6. Taking one of the following actions, within 30 days of receiving notice, with respect to any employee who is so convicted:
 - a. Taking appropriate personnel action against such an employee, up to and including termination; or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by federal, state, or local health, law enforcement, or other appropriate agency.
- 7. Making a good faith effort to continue to maintain a drug-free workplace.
- G. Certification for Confidential Funds. Prior to the expenditure of \$20,000 allocated for confidential funds, the project director shall sign a certification indicating that the director has read, understands, and agrees to abide by all the conditions pertaining to confidential funds as set forth in the most recent edition of the Office of Justice Programs (OJP) Financial Guide (<http://www.ojp.usdoj.gov/finguide06/part3/part3chap8/part3chap8.htm>).

III. Suspension or Termination of Funding

The Criminal Justice Services Division may suspend funding in whole or in part, terminate funding, or impose another sanction on the Awardee for any of the following reasons:

- A. Failure to make satisfactory progress toward the goals and objectives set forth in the application.
- B. Failure to adhere to the requirements of the award Agreement and standard or special conditions.
- C. Proposing or implementing substantial plan changes to the extent that, if originally submitted, the application would not have been approved.
- D. Failing to comply substantially with any other applicable federal or state statute, regulation, or guideline. Before imposing sanctions, the Criminal Justice Services Division will provide reasonable notice to the Awardee of its intent to impose sanctions and will attempt to resolve the problem informally.

IV. Awardee Representations and Warranties

Awardee represents and warrants to Awardor as follows:

- A. Existence and Power. Awardee is a political subdivision of the State of Oregon. Awardee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.
- B. Authority. No Contravention. The making and performance by Awardee of this Agreement (a) have been duly authorized by all necessary action of Awardee, (b) do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative agency or any provision of Awardee's articles of incorporation or bylaws and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Awardee is a party or by which Awardee or any of its properties are bound or affected.
- C. Binding Obligation. This Agreement has been duly authorized, executed and delivered on behalf of Awardee and constitutes the legal, valid, and binding obligation of Awardee, enforceable in accordance with its terms.
- D. Approvals. No authorization, consent, license, approval of, filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Awardee of this Agreement.



Karen Green, Grants Manager
Oregon State Police
4760 Portland Road NE
Salem, OR 97305
(503) 378-4145 ext. 546

10/12/07

Date



Signature of Authorized Awardee Official

10-09-07

Date

Timothy MOORE / CHIEF DEPUTY

Name/Title



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST short form

Board Clerk Use Only

Meeting Date: 12/20/07
Agenda Item #: R-7
Est. Start Time: 10:20 AM
Date Submitted: 12/05/07

Agenda Title: First Reading of a Proposed Special Ordinance Designating Disposition of Tax Foreclosed Property

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

Date Requested: December 20, 2007 Time Requested: 10 Minutes
Department: Community Services Division: Tax Title
Contact(s): Gary Thomas
Phone: 503-988-3590 Ext. 22591 I/O Address: 503/4/TT
Presenter(s): Matthew O. Ryan

General Information

1. What action are you requesting from the Board?

The Tax Title Section is requesting the Board to approve the repurchase of two tax foreclosed properties by the former owner Lakea Corporation.

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 subject properties (as shown in Exhibit A) were foreclosed on for delinquent property tax liens. The first property R117688 came into County ownership on October 15, 2005, and the adjacent property R117960 came into County ownership on September 25, 2006.

In 2005 and 2006 letters were sent to the former owner of record, Lakea Corporation, providing the opportunity to repurchase these properties. Lakea Corporation's registered agent Mr. Anson contacted the County's Tax Title office in 2006, requesting the payoff information to repurchase the property within the 30 days provided by Multnomah County Code Chapter 7. The repurchase transactions were never completed and the timeline restriction now precludes the County's resale to Lakea Corporation.

Although the timeline for repurchase, as provided under MCC 7.402 has passed; Tax Title recommends the Board approve this Special Ordinance allowing for the repurchase of the two

parcels by Lakea Corporation. The proposed repurchase accomplishes a greater public good by providing for the County to recoup the delinquent taxes as well as the completion of the required environmental clean up work.

This action affects our Vibrant Communities Program Offer by placing two tax foreclosed properties back onto the tax roll.

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

The repurchase will allow for the recovery of the delinquent taxes, fees, and expenses. The sale will also reinstate the properties on the tax roll (see Exhibit B).

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

Multnomah County Code Section 7.402 provides for notices by certified mail to be sent to the former owners of tax foreclosed properties. The notices shall advise the recipients that within 30 days from the date of notice they can pay in cash the repurchase price established by the department or complete an application to repurchase the property by repurchase contract.

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

Former owner is allowed to repurchase the property.

City of Portland liens will be paid in full.

R117688

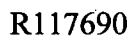


EXHIBIT B
PROPOSED PROPERTY LISTED FOR REPURCHASE
FISCAL YEAR 2008

LEGAL DESCRIPTION: R117688

A tract of land in the Northwest One-Quarter of Section 29, Township 1 North, Range 1 East of the Willamette Meridian, Multnomah County, Oregon being a portion of Lots 98 and 99 of Blythswood, a duly recorded plat of said Multnomah County and recorded October 8, 1907 in Plat Book 400 at Page 100, Multnomah County Plat Records and described as follows:

Commencing at the Northeast corner of the Marcus Neff Donation Land Claim; thence S00°19'00"W, a distance of 206.60 feet to the true point of beginning of the tract of land herein described: thence N89°41'00"W, a distance of 184.34 feet; thence S00°19'00"W, a distance of 169.42 feet to a point on the Northerly line of N.W. Lake Street, a 50 foot wide dedicated street; thence N63°07'30"E, along the Northerly line of said N.W. Lake Street, a distance of 207.26 feet to a point on the West line of N.W. 35th Avenue; thence N00°19'00"E, along said West line, a distance of 74.72 feet to the point of beginning

LEGAL DESCRIPTION: R117690

A portion of Lot 98, according to the duly filed plat of Blythswood, in the City of Portland, filed October 8th, 1907 in Plat Book 400 page 100, Records of the County of Multnomah and State of Oregon, more particularly described as follows:

Beginning at the Northeast corner of the Marcus Neff Donation Land Claim; thence South 0°19'00" West along the West line of N.W. 35th Avenue, 61.60 feet to the true point of beginning of the parcel to be described; thence North 89°41' West 224.34 feet; thence South 0°19'00 West, 145.00 feet; thence South 89°41' East, 224.34 feet to a point on the West line of N.W. 35th Avenue; thence North 0°19'00" East along the West Line, 145.00 feet to the true point of beginning.

PROPERTY ADDRESS:	3003 W/NW 35th AVE / 3003 NW 35th AVE
TAX ACCOUNT NUMBER:	R117688 / R117690
GREENSPACE DESIGNATION:	No designation
SIZE OF PARCEL:	22,502 Square Feet / 32,670 Square Feet
ASSESSED VALUE:	\$264,240.00 / \$1,175,230.00

TOTAL PRICE OF ITEMIZED EXPENSES FOR REPURCHASE OF BOTH PROPERTIES

BACK TAXES & INTEREST:

TAX TITLE MAINTENANCE COST & EXPENSES:

PENALTY & FEE:

CITY LIENS

MINIMUM PRICE REQUEST FOR REPURCHASE

	\$165,719.36
	\$7,956.48
	\$4,283.76
	\$30,540.68
	\$208,500.28

Required Signature

**Elected Official or
Department/
Agency Director:**

A handwritten signature in cursive script, reading "M. Cecilia Johnson". The signature is written in dark ink and is positioned above a horizontal line.

Date: 12/05/07

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. _____

Special Ordinance Designating Disposition of Tax Foreclosed Property

The Multnomah County Board of Commissioners Finds:

- a. On October 13, 2003 judgment was entered in Multnomah County Circuit Court foreclosing the property tax liens against the property described in the attached Exhibit A; as Parcel 1. Two years after the judgment the County Tax Collector deeded all right, title and interest in the property to Multnomah County as authorized under ORS 312.200. This property's Tax Account Number is R117688.
- b. On September 21, 2004 judgment was entered in Multnomah County Circuit Court foreclosing the property tax liens against the property described in the attached Exhibit A; as Parcel 2. Two years after the judgment the County Tax Collector deeded all right, title and interest in the property to Multnomah County as authorized under ORS 312.200. This property's Tax Account Number is R117690.
- c. Both properties were formerly owned by an entity known as Lakea Corporation, whose registered agent was Larry D. Anson. The properties are adjacent to each other and are collectively and commonly referred to as the "Columbia American Plating" property which was at one time a business name of the operations at the site, which included metal plating activities.
- d. By 2003 the business operations previously conducted at the Columbia American Plating site were shut down by City of Portland officials because of fire and safety hazards. That same year, the extent of the environmental contamination at the site prompted the Oregon DEQ to seek the assistance of the Federal EPA in evaluating and mitigating any threat to human health and the environment posed by the conditions at the site.
- e. In 2003 the EPA initiated the cleanup work at the Columbia American Plating site. The County understands that the EPA and the DEQ have incurred substantial sums in conducting and managing environmental cleanup work at the site since that time. The EPA's costs alone are reported to be over \$1,500,000. Moreover, the County understands that significant clean-up work still needs to be done on site to finalize the cleanup.
- f. In 2005 and 2006, after the respective tax foreclosure deeds were recorded; written notices were sent to Lakea Corporation by County's Tax Title Division

advising of the right to repurchase the tax foreclosed property under Multnomah County Code (MCC) Chapter 7.402. The repurchase notices provided that the former owner must repurchase or vacate the property by a given dates in 2005 and 2006.

- g. Mr. Anson contacted the County's Tax Title Office in 2006 but never completed the repurchases and the timeline and restriction under MCC 7.402 now precludes the County's resale to Lakea Corporation.
- h. The County does not have the resources to pay for the necessary cost of the remaining cleanup work.
- i. The County understands that Mr. Anson has worked out a satisfactory arrangement that provides for this repurchase of the property by Lakea Corporation and the ultimate transfer of the property from Lakea to an adjacent land owner and commercial business, Carson Oil. Carson Oil has the resources to complete the environmental clean up work and return the property to the tax rolls. It is also understood that there have been negotiations between Mr. Anson, Carson Oil and the EPA, to allow for at least a partial reimbursement to the EPA of some of its clean-up costs to date.
- j. Under ORS 275.180, the minimum price for which the County can sell the property back to the former owner is not less than the amount of taxes and interest accrued and charged against the property. Also under ORS 275.180 the County has the authority at any time to sell tax foreclosed property to the former owner at private sale.
- k. Although the timeline for repurchase, as provided under MCC 7.402 has passed; Tax Title recommends the Board approve this Special Ordinance allowing for the repurchase of these properties by Lakea Corporation; because the proposed repurchase accomplishes a greater public good by providing for the County to recoup the delinquent taxes as well the completion of the environmental clean up work to occur and the reinstallation of these properties on the tax roll.
- l. In the interest of fairness and to prevent potential challenges to the disposition of the property, the Board believes it to be in the best interests of the County to approve this Special Ordinance and remove this property from consideration for alternative disposition under MCC Chapter 7 and authorize the repurchase of the property by the former owner.

Multnomah County Ordains as follows:

Section 1. Notwithstanding MCC 7.402; Multnomah County is authorized to sell to Lakea Corporation the real properties described in the attached Exhibit A in compliance with the requirements of ORS 275.180, provided the sale of the property shall be completed no later than June 30, 2008.

Section 2. The County Chair is authorized to execute a deed conveying the real properties described in the attached Exhibit A to Lakea Corporation.

FIRST READING: December 20, 2007

SECOND READING AND ADOPTION: January 3, 2008

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By Matthew O. Ryan, Assistant County Attorney

SUBMITTED BY:

M. Cecilia Johnson, Director, Dept. of Community Services



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 12/20/07
Agenda Item #: R-8
Est. Start Time: 10:30 AM
Date Submitted: 12/12/07

Agenda Title: RESOLUTION Approving Revised Public Contract Review Board Rules
Effective January 1, 2008

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

Requested Meeting Date: December 20, 2007 Amount of Time Needed: 10 minutes
Department: County Management and County Attorney Division: CPCA
Contact(s): John Thomas
Phone: (503) 988-3138 Ext. 83138 I/O Address: 503/5
Presenter(s): Gail Rubin and John Thomas

General Information

1. What action are you requesting from the Board?

The Board is asked to approve a resolution adopting new Public Contract Review Board Rules. The recommendation is to approve the resolution.

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 most recent version of the Multnomah County Public Contract Review Board (PCRB) Rules was adopted September 14, 2006. 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. Each legislative session amendments to these ORS Chapters result in amendments to the AG Model Rules which require modification of our PCRB Rules to conform with state law. The proposed rules will become effective on January 1, 2008, the same date that the ORS revisions and the AG Model Rules become effective.

The proposed rules were revised to incorporate changes to the Attorney General Model Contract Rules to the extent necessary to conform our rules to state law. Most of the changes are simply housekeeping changes to make the rules operate more efficiently.

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

None

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

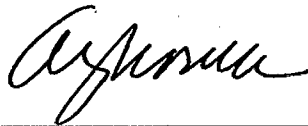
The new rules are modeled on the Attorney General Model Public Contract Rules and the Department of Administrative Services Rules. The new rules have been reviewed and approved by the County Attorney.

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:**



Date: 12/11/07

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Adopting Revised Public Contract Review Board Rules Effective January 1, 2008

The Multnomah County Board of Commissioners Finds:

- a. The most recent version of the Multnomah County Public Contract Review Board (PCRB) Rules was adopted September 14, 2006. 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. Each legislative session amendments to ORS Chapters 279A, 279B and 279C and related statutes result in amendments to the AG Model Rules which require modification of our PCRB Rules to conform with state law.
- c. The proposed rules will become effective on January 1, 2008, the same date that the ORS revisions and the AG Model Rules become effective.
- 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 1, 2008. The Attorney General Model Rules provided for in ORS 279A.065 do not apply to Multnomah County.

ADOPTED this 20th day of December 2007.

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:
John S. Thomas, Deputy County Attorney

**MULTNOMAH COUNTY
PUBLIC CONTRACT REVIEW BOARD
RULES**

Effective January 1, 2008

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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 January 1, 2008.

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

- (1) **Addendum or Addenda.** An addition or deletion to, a material change in, or general interest explanation of the Solicitation Document.
- (2) **Advantageous.** In the County's best interests, as assessed according to the judgment of the County.
- (3) **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.
- (4) **Affected Person or Affected Offeror.** A Person whose ability to participate in a Procurement is adversely affected by a decision of the County.
- (5) **Bid.** A response to an Invitation to Bid.
- (6) **Bidder.** A Person who submits a Bid in response to an Invitation to Bid.
- (7) **Board.** The Multnomah County Public Contract Review Board.
- (8) **Chair.** The Chair of the Board of County Commissioners for Multnomah County.
- (9) **Code.** The Public Contracting Code, ORS chapters 279A, 279B and 279C.
- (10) **CPCA.** Central Procurement and Contract Administration.
- (11) **CPCA Manager.** The Central Procurement and Contract Administration Manager whose duties are described in Division 15 or that person's designee.
- (12) **CPCA MINT Site.** A site maintained by CPCA on the MINT (County intranet site) for use by County employees.
- (13) **CPCA Website.** The Internet World Wide Web site maintained by CPCA.
- (14) **Closing.** The date and time announced in the Solicitation Document as the deadline for submitting Offers.
- (15) **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.
- (16) **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.
- (17) **Conduct Disqualification.** A Disqualification pursuant to ORS 279C.440 and Rule 49-0370.
- (18) **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."

- (19) **Contractor.** The Person with whom the County enters into a Contract.
- (20) **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.
- (21) **Days.** Calendar days unless otherwise specified by these Rules.
- (22) **DBE.** A business concern described in ORS 200.005(1) and certified as such with the State of Oregon pursuant to ORS 200.055.
- (23) **Department.** A County Department or any unit within a Department, which has responsibility for the purchase of Goods or services for the County.
- (24) **Descriptive Literature.** The Offeror's materials submitted to provide information concerning the products available in response to the Solicitation Document.
- (25) **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.
- (26) **Discussions.** To exchange information, compare views, take counsel, and communicate with another for the purposes of achieving clarification and mutual understanding of an Offer.
- (27) **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.
- (28) **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.
- (29) **Electronic Offer.** A response to a request for Quotes submitted via e-mail.
- (30) **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.
- (31) **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.
- (32) **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.
- (33) **Facsimile.** A document that has been transmitted by and received by a facsimile machine.
- (34) **Foreign Contractor.** A Contractor that is not domiciled in or registered to do business in the State of Oregon. See Rule 49-0490.
- (35) **Goods.** Supplies, equipment, or materials, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto.

- (36) **Grant.** Grant has the meaning set forth in 279A.010(i)
- (37) **Informal Quote.** A Quote made in response to a Solicitation under Rule 49-0160.
- (38) **Intermediate Procurement.** A sourcing method authorized by Rule 47-0270.
- (39) **Invitation to Bid or ITB.** The Solicitation of competitive, Written, Signed and sealed Bids in which Specification, price and delivery (or project completion) are the predominant Award criteria.
- (40) **Living Wage.** A minimum wage required to be paid on janitorial, security and food services pursuant to Resolution 98-165.
- (41) **MBE.** A minority business concern described in ORS 200.005(6) and certified as such with the State of Oregon pursuant to ORS 200.055.
- (42) **Minority Individual.** A person described in ORS 200.005(7).
- (43) **Negotiations.** To compare views, take counsel, and communicate with another so as to arrive at a voluntary, mutual agreement about a matter.
- (44) **Nonresident Bidder.** A Bidder described in ORS 279A.120(1)(a).
- (45) **Offer.** A Bid, Proposal or Quote or other response to a Solicitation as applicable.
- (46) **Offeror.** A Person submitting a Bid, Proposal or Quote as applicable; a Bidder or a Proposer.
- (47) **Opening.** The date, time and place announced in the Solicitation Document for the public Opening of Written sealed Offers.
- (48) **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.
- (49) **Personal Services.** Services as defined in Rule 47-0000(2).
- (50) **Prevailing Wage Rate.** When used in these Rules means the "prevailing rate of wage" defined in ORS 279C.800(3).
- (51) **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.
- (52) **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.
- (53) **Procurement File.** The file required to be maintained under Rule 46-0490.
- (54) **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.
- (55) **Proposal.** A response to a Request for Proposals.

- (56) **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.
- (57) **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."
- (58) **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."
- (59) **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)
- (60) **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).
- (61) **PUR-1.** The County administrative procedure for use for Solicitation of Contracts for Personal Services.
- (62) **QRF.** Qualified Rehabilitation Facility. A non-profit corporation, defined in ORS 279.835(4), to serve Disabled Individuals.
- (63) **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.
- (64) **Request for Proposals or RFP.** A Solicitation Document calling for Proposals.
- (65) **Resident Bidder.** A Bidder described in ORS 279A.120(1)(b).
- (66) **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.
- (67) **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.
- (68) **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.
- (69) **Rules.** These Public contracting Rules unless otherwise indicated.
- (70) **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.

- (71) **Small Procurement.** A procurement pursuant to Rule 47-0265
- (72) **Sole-Source Procurement.** A sourcing method authorized by Rule 47-0275.
- (73) **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.
- (74) **Solicitation Document.** An Invitation to Bid, Request for Proposals or other 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.
- (75) **Special Procurement.** A sourcing method authorized by Rule 47-0285
- (76) **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.
- (77) **Trade Services.** All remaining services that do not meet the definition for Personal Services.
- (78) **Women.** As used in these Rules this term has the meaning set forth in ORS 200.005(10).
- (79) **WBE.** A Women business concern described in ORS 200.005(6) and certified as such with the State of Oregon pursuant to ORS 200.055.
- (80) **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.
- (81) **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 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 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; 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. 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.
- (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 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 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 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) 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

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 47-0263. 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).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.050

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) Contractor'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. 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;
- (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 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 Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the delivery of the Goods or Services without prior Written approval from the County; and
- (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 total costs of ownership or operation of a product over its life shall be objectively measurable. The Invitation to Bid shall set forth the evaluation criteria to be used. No criteria may be used in a bid evaluation that are 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, the CPCA may issue a multistep Invitation to Bid requesting the submission of unpriced 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) 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;
- (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) Contractor'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 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:
 - (s) Where applicable, requirements for payment of a Living Wage.
- (3) The Request for Proposals may also, if applicable:
- (a) Identify those contractual terms or conditions the Department reserves, in the Request for Proposals, for negotiation with Proposers;
 - (b) Request that Proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the Request for Proposals;
 - (c) 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.

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 that call for the establishment of a Competitive Range or include Discussions or Negotiations, a Department shall employ 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 an 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.

47-0262 Competitive Range, Discussions and Negotiations

- (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.
 - (B) The Department may increase 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 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 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 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 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), the Department shall proceed as follows:

(a) **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:

- (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 Proposer with whom it is currently discussing or negotiating, if the Department reasonably believes that:
 - (i) The Proposer is not discussing or negotiating in good faith; or
 - (ii) 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.
- (c) **Continuing Serial Negotiations.** If the Department is conducting serial Negotiations and the Department terminates Negotiations with a Proposer in accordance with paragraph 3(b)(B) of this Rule, the Department may then commence Negotiations with the next highest scoring Proposer in the Competitive Range, 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 Proposer with whom it is currently discussing or negotiating; or
 - (B) Completed one round of Discussions or Negotiations with all Proposers in the Competitive Range, 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 Proposers. The Department:
 - (A) Shall treat all Proposers fairly and shall not favor any Proposer over another;

- (B) May disclose other Proposer's Proposals or the substance of Negotiations with other Proposers only if the CPCA Manager notifies all of the Proposers with whom the Department will engage in Negotiations of the Department's intent to disclose before engaging in Negotiations with any 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 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 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) **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.
- (5) **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.
- (6) **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.
- (5) **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.
- (6) **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.
- (7) **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.
 - (8) **BOLI Notification.** The Department shall provide notification of Award to BOLI as required by ORS 279C.835.
 - (9) **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;
 - (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.
 - (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.
 - (10) **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 the 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 Work that is necessary and appropriate to remedy the conditions creating 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.

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 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 than 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 bound to an obligation to negotiate in good faith and only on those terms 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 Proposal of alternative terms under Rule 47-0262, 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.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065, ORS 279B.055 & ORS 279B.60

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). In the event of a discrepancy, unit prices shall prevail over extended 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

- (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 prequalifying 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.

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.** After Bid Opening, the County may conduct Discussions with apparent Responsive Bidders for the purpose of clarification to assure full understanding of the Bid. All Bids, 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 Prohibited.**

 - (a) Bids.** Except as permitted by subsection (2) of this Rule, 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. 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.
- (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 indicate the capability of the Offeror to meet all contractual responsibilities; and
 - (ii) Has a satisfactory record of contract performance. 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. 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 qualified legally 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 in the same manner as was used for the notice of the solicitation. 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 resolicitation.
- (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); and
 - (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 Contract Amendments

- (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 publically 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.
 - (i) 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 shall comply with the requirements of this Rule including Contracts advertised, or if not advertised, entered into prior to March 1, 2005.
- (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; or
 - (c) If the circumstances set forth in ORS 279B.140(2) exist.

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

- (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.
- (a) 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.

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 Formal Selection Procedure applicable to selection of the Consultant at the time of 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 Contractor 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 Contractor 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 Contractor 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 of 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 that 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 Requirement

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 \$50,000 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 or \$50,000 in the case of Contracts for highways, bridges and other transportation projects. 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, and may reject for good cause all Offers upon the County's finding that it is in the public interest to do so;
 - (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) Fee paid to BOLI (ORS 279C.830);
- (P) BOLI Public Works bond (ORS 279C.830 (3))
- (Q) Retainage (ORS 279C.550 to 279C.570);
- (R) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);
- (S) Contractor's relations with subcontractors (ORS 279C.580);
- (T) Notice of claim (ORS 279C.605);
- (U) 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.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) **Noncomplying 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.

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
 - (d) 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 subject to disclosure 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 nonconfidential 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). In the event of a discrepancy, unit prices shall prevail over extended 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 are 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 (as defined in ORS 279A.120) education service district. 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 a satisfactory record of contract performance. 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. 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 qualified legally 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.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 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 qualified 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 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) **ESPC 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 in 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.
- (e) **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.

- (f) **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.
- (g) **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 Solicitations 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 (3), 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) **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.
- (3) **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 securities:**

- (A) The Contractor may deposit bonds or securities with the County or in any bank or trust company to be held for the benefit of the County. In such event, the County shall reduce the Retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.
- (B) Bonds and securities deposited or acquired in lieu of Retainage shall 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 its Agencies.
 - (iii) Obligations of any corporation wholly owned by the Federal Government.
 - (iv) Indebtedness of the Federal National Mortgage Association.
- (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.

- (4) **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.
- (5) **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.
 - (i) If no federal funds are being used to fund the work, the wage rates established under ORS 279C.815(2)(a) shall be paid.
 - (ii) If federal funds are being used to fund the work, the wage rates established under ORS 279C.815(2)(b) shall be paid.
 - (iii) 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.
 - (f) Requirement for payment of fee to BOLI, as set forth in ORS 279C.830(2) and administrative rule of the BOLI commissioner.

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.
- (c) **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.
- (d) **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.
- (e) **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.
- (f) **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) No Department shall enter into a Contract for an amount in excess of \$75,000 unless the Contractor is at the time of such Contract certified as an EEO Contractor by the City of Portland. Before entering into any such Contract with a Contractor, the Department shall determine from the listing on the CPCA MINT Site or by other available means whether a Contractor is EEO certified.

- (2) Contractors may become EEO Certified by application to the City of Portland. A Contractor may appeal a decision to deny certification or revoke certification in accordance with the procedure prescribed in ORS 279B.425.

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 Responsive Responsible 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.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 07-192

Adopting Revised Public Contract Review Board Rules Effective January 1, 2008

The Multnomah County Board of Commissioners Finds:

- a. The most recent version of the Multnomah County Public Contract Review Board (PCRB) Rules was adopted September 14, 2006. 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. Each legislative session amendments to ORS Chapters 279A, 279B and 279C and related statutes result in amendments to the AG Model Rules which require modification of our PCRB Rules to conform with state law.
- c. The proposed rules will become effective on January 1, 2008, the same date that the ORS revisions and the AG Model Rules become effective.
- 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 1, 2008. The Attorney General Model Rules provided for in ORS 279A.065 do not apply to Multnomah County.

ADOPTED this 20th day of December 2007.



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:

John S. Thomas, Deputy County Attorney



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 12/20/07
Agenda Item #: R-9
Est. Start Time: 10:35 AM
Date Submitted: 12/12/07

Agenda Title: RESOLUTION Approving Agreement with Two Main Development LLC for a Tunnel Easement between the Justice Center and the Courthouse Site and Granting Permits for Construction Staging

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

Requested Meeting Date: December 20, 2007 Amount of Time Needed: 5 minutes
Department: DCM Division: F & PM
Contact(s): Doug Butler
Phone: 503-988-6294 Ext. 86294 I/O Address: 274
Presenter(s): Doug Butler, Facilities Director

General Information

1. What action are you requesting from the Board?

Approval of a resolution to enter into an agreement with Two Main Development LLC for an easement through their below grade right of way for a future tunnel which would provide secure and safe inmate circulation between the existing Justice Center and the prospective Courthouse.

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.

In December 2006 the Board declared the North Hawthorne Bridgehead property as the preferred site for a new courthouse in downtown Portland. Part of the siting decision was the proximity of the North Hawthorne Bridgehead property to the existing Justice Center. By placing a new Courthouse close to the Justice Center the County can work to eliminate the cumbersome and unsafe existing inmate transportation elements that exist between the current facilities.

During the siting process numerous options were discussed in regards to potential links between the two buildings which will be one block apart. Options such as a sky bridge, continued busing, and a below grade tunnel were explored. With Two Main Development LLC beginning construction on a new office tower on the block between the Justice Center and new Courthouse site the County

approached them regarding the potential for a tunnel through their property. Negotiations with Two Main Development LLC has produced an agreement for an easement through their under ground right of way on Madison for a future tunnel.

The tunnel is one of the 11 projects listed in the Courthouse Program Offer 72054 which the Board purchased during their 2008 budget process. Approval of this resolution puts the legal elements in place and sets the foundation for a future tunnel. It does not design nor construct the tunnel this would be done at a later date most likely during construction of the new Courthouse.

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

In exchange for granting the tunnel easement Two Main Development LLC's is requesting reimbursement for \$150,000 to \$200,000 of easement improvements and use of the County property on the North & South Hawthorne Bridgeheads for temporary staging and storage. The easement improvements they are supplying are incorporated into their One Main Place construction project.

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

The City of Portland has the right of way under any city street. As a property owner, Two Main Development LLC has a below grade property interest in the right of way which extends to the middle of the street. For the County to obtain access to the property owner's interest to the right of way a legal agreement to transfer those rights must be in place.

The attached agreement is a legal document that has been prepared by the County attorney's office and Two Main Development LLC's attorney in order to comply with all legal requirements.

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

The under ground tunnel concept has been apart of the bigger Courthouse discussion all through out the siting process. It has been mentioned in numerous newspaper articles and discussed in meetings with Portland's Mayor, Commissioners, Planning, and PDOT. The agreement has taken extensive discussions and negotiations with Shorenstein in order to provide the best arrangement to meet both party needs.

Required Signature

Elected Official or
Department/
Agency Director:



Date: 12/12/07

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. _____

Approving Agreement with Two Main Development LLC for a Tunnel Easement between the Justice Center and the Courthouse Site and Granting Permits for Construction Staging

The Multnomah County Board of Commissioners Finds:

- a. By Resolution 06-203 adopted December 14, 2006 the Board declared the North Hawthorne Bridgehead block to be the preferred site for a new Multnomah County courthouse and directed Facilities and Property Management (Facilities) to, among other things, negotiate for a tunnel easement agreement through Block 10 between the new courthouse site and the Justice Center suitable for inmate transport.
- b. Agreement has now been reached with the owners of Block 10 by which the owners have agreed to provide a tunnel easement to the County in the right of way of Madison Avenue adjacent to the new office building currently under construction on Block 10. The owners have a property interest in the right of way subject to the rights of the City of Portland to use the right of way for a city street.
- c. The tunnel easement agreement provides that the County will reimburse the owners for the actual cost of improvements necessary to accommodate the easement. The estimated cost of the improvements is \$150,000 to \$200,000. Other than reimbursement of the owners' costs, the owners have agreed to grant the easement without monetary consideration from the County.
- d. The owners have requested, in exchange for granting the tunnel easement, that the owners have temporary use of the surplus area of North Hawthorne Bridgehead and the north 75' of the South Hawthorne Bridgehead for construction staging for the new building being constructed on Block 10. Facilities, in consultation with Transportation, has determined that these properties are surplus to any county use for the periods set forth in the attached permit.
- e. It is in the best interest of Multnomah County to approve the attached agreement.

The Multnomah County Board of Commissioners Resolves:

1. The Board approves the attached agreement for a tunnel easement through Lot 10 to serve the Justice Center and the new courthouse site and for a permit for the temporary use by Two Main Development LLC of portions of the Hawthorne

Bridgehead blocks for the periods set forth in the agreement. The Board declares that such portions of the Hawthorne Bridgehead blocks are surplus to any County use for the periods set forth in the agreement.

2. The Chair is authorized to execute an agreement substantially in the form attached to this resolution.

ADOPTED this 20th day of December 2007.

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:

Carol M. Ford, Director, Dept of County Management

**AGREEMENT TO GRANT TUNNEL EASEMENT, PROVIDE FOR INITIAL
ACCOMMODATION AND REIMBURSEMENT AND PERMIT FOR MATERIAL
AND EQUIPMENT STAGING AREA**

THIS AGREEMENT ("Agreement") is entered into as of December 11, 2007, by and between **TWO MAIN DEVELOPMENT LLC**, a Delaware limited liability company ("**Two Main**"), and **MULTNOMAH COUNTY, OREGON**, a political subdivision of the State of Oregon (the "**County**").

RECITALS

- A. Two Main is the owner of certain real property located in Multnomah County, Oregon more particularly described on the attached **Exhibit A** (the "**Property**").
- B. Two Main is constructing a high rise office building on the Property (the "**Two Main Building**").
- C. County is the owner of certain real property located in Multnomah County, Oregon, more particularly described on the attached **Exhibit B** (the "**County Justice Property**") and on the attached **Exhibit C** (the "**County Court House Property**").
- D. County desires the option to construct a new County Court House on the County Court House Property.
- E. County desires to obtain a perpetual right of way easement under the surface of and through the Property for the potential future construction, operation, maintenance, use, modification, repair, replacement and improvement of an underground pedestrian tunnel (the "**Tunnel**") between the County Justice Property and the County Court House Property.
- F. Two Main desires to obtain a permit from County for construction staging and storage use that certain real property located in Multnomah County, Oregon more particularly indicated on the attached **Exhibit D** and **Exhibit G** (the "**Permit Area**").

AGREEMENT

1. **TUNNEL EASEMENT.** Two Main shall grant to County an exclusive permanent subsurface easement by Tunnel Easement Agreement in the form attached as **Exhibit E** the "**Tunnel Easement Agreement**"). Two Main shall execute and deliver the Tunnel Easement Agreement upon reimbursement of all sums due under Section 2.2 hereof.

2. **INITIAL ACCOMMODATION.**

2.1 **Initial Accommodation.** In the design and construction of the Two Main Building, Two Main shall make initial accommodation for the potential future Tunnel, as

depicted on the attached **Exhibit F** ("**Initial Accommodation**"), which Initial Accommodation includes without limitation:

(a) Spanning, rather than on-grade, slab floor at Two Main electrical vault.

(b) Lengthening of curb side sheet shoring at Two Main electrical vault.

(c) Delay of construction operations to accommodate the accommodations described in Section 2.1(a) and (b) above. The parties agree that as of the date of this Agreement there has been a delay of construction operations chargeable to the County resulting from the execution of this agreement. The exact cost of such delay has not yet been determined but is currently estimated to be approximately \$15,000. The parties further agree that any further delay contemplated herein is delay caused by circumstances that arise in the course of construction and are unforeseen by Two Main on the date of execution of this agreement.

2.2 **Reimbursement for Initial Accommodation.** County shall reimburse Two Main for all costs of Initial Accommodation, including, without limitation, management, design, permitting and construction. Two Main shall invoice County and County shall pay such cost on a "cost to date" basis. Payment shall be due within 30 days of receipt of the invoice. Invoices shall identify in detail the costs included in each such invoice. County shall have the right to audit such invoices at the sole cost and expense of the County. Two Main agrees to cooperate in providing such documents and information as are necessary for County to complete its audit. Invoices shall be submitted to County upon the occurrence of each of the following events: (a) execution of this Agreement for costs incurred prior to execution of this Agreement, and (b) completion of construction of the Initial Accommodation. In the event that Two Main becomes aware of circumstances that may cause a delay of construction operations under paragraph 2.1 (c) above, Two Main will, as soon as practical, advise County in writing of the circumstances. Two Main will thereafter provide to County, within a reasonable period of time after request, updated information concerning the delay and cost of the delay to the extent available. County shall have the right at any time after receipt of notice of delay to terminate this agreement by notice in writing to Two Main. In the event of such termination, County shall pay to Two Main, within 30 days of such termination, all unpaid costs for Initial Accommodation incurred by Two Main to the date of such termination and any additional reasonable costs required to be incurred by Two Main as a result of such termination. Such termination shall not affect Two Main's rights under the Permit granted to Two Main under this Agreement.

3. **PERMIT FOR MATERIALS AND EQUIPMENT STAGING AREA.** County shall grant to Two Main a Permit for construction staging and storage use the two Staging Areas indicated on **Exhibit D-1** in the form attached as **Exhibit G** (the "**Permit**"). Two Main and County shall execute duplicate originals of the Permit upon execution hereof.

4. **DEFAULT AND REMEDIES.** If either party neglects or refuses to carry out this Agreement according to its terms, the other party shall be entitled to such remedies for breach of contract as may be available under applicable law; including (without limitation) the remedy of specific performance.

5. **GENERAL PROVISIONS.**

5.1 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties, and their respective successors, and assigns.

5.2 **Time of Essence.** Time is of the essence of each and every provision of this Agreement.

5.3 **Notices.** All demands or notices required or permitted to be given under this Agreement shall be in writing. Notices may be served by certified or registered mail, postage paid with return receipt requested; by nationally recognized private overnight courier, prepaid; by telex, facsimile, or other telecommunication device capable of transmitting or creating a written record (provided that a copy is also sent by U.S. Mail, first class); or personally. Mailed notices shall be deemed delivered five (5) days after mailing, properly addressed. Couried notices shall be deemed delivered on the date that the courier warrants that delivery shall occur. Telex, facsimile or telecommunicated notices shall be deemed delivered when receipt is either confirmed by confirming transmission equipment or acknowledged by the addressee or its office. Personal delivery shall be effective when accomplished. Unless a party changes its address by giving notice to the other party as provided herein, notices shall be delivered to the parties at the following address:

Two Main: Two Main Development LLC
c/o Shorenstein Realty Service, LP
555 California Street, 49th Floor
San Francisco, CA 94104
Attn: Corporate Secretary

With a copy to: Todd Sklar
c/o Shorenstein Realty Services, LP
555 California Street, 49th Floor
San Francisco, CA 94104

County: Multnomah County, Oregon
401 N. Dixon, Portland Oregon, 97227
Attn: Facilities Director

With a copy to: Multnomah County Attorney
501 SE Hawthorne Blvd Ste 500
Portland OR 97214

5.4 **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

5.5 **Attorneys' Fees.** Each party shall pay its own attorney's fees incurred in the preparation of this Agreement, the Tunnel Easement Agreement, and the Permit. In the event suit or action is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on any appeal, and on any petition for review, in addition to all other sums provided by law.

5.6 **Prior Agreements.** This Agreement supersedes and replaces all written and oral agreements previously made or existing between the parties (including, without limitation, all previous letters of intent and addenda thereto and all verbal agreements and understandings).

5.7 **Applicable Law.** This Agreement shall be construed, applied, and enforced in accordance with the laws of the state of Oregon.

5.8 **Changes in Writing.** This Agreement and any of its terms may only be changed, waived, discharged, or terminated by a written instrument signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

5.9 **Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

TWO MAIN DEVELOPMENT LLC
a Delaware Limited Liability Company

By _____
Title _____

MULTNOMAH COUNTY OREGON,
a political subdivision of the State of Oregon

By _____
Ted Wheeler
Chair

Exhibit A	Property
Exhibit B	County Justice Property
Exhibit C	County Court House Property
Exhibit D	Staging Area
Exhibit E	Tunnel Easement Agreement
Exhibit F	Illustration of Initial Accommodations
Exhibit G	Permit

EXHIBIT A

Grantor's Property

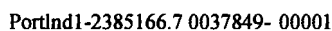
Block 10, PORTLAND ADDITION, in the City of Portland, County of Multnomah, State of Oregon.

EXCEPT from Lots 5, 6, 7 and 8 thereof, the Westerly 5 feet.

Subject to and excepting the rights of the public in and to any street, road, alley or public right of way.

County Justice Property

All of Block 25, PORTLAND ADDITION TO THE CITY OF PORTLAND, in the City of Portland, County of Multnomah and State of Oregon



County Court House Property

**All of Block 7, PORTLAND ADDITION TO THE CITY OF
PORTLAND, in the City of Portland, County of Multnomah and State
of Oregon**

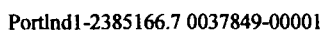


EXHIBIT D

Staging Area

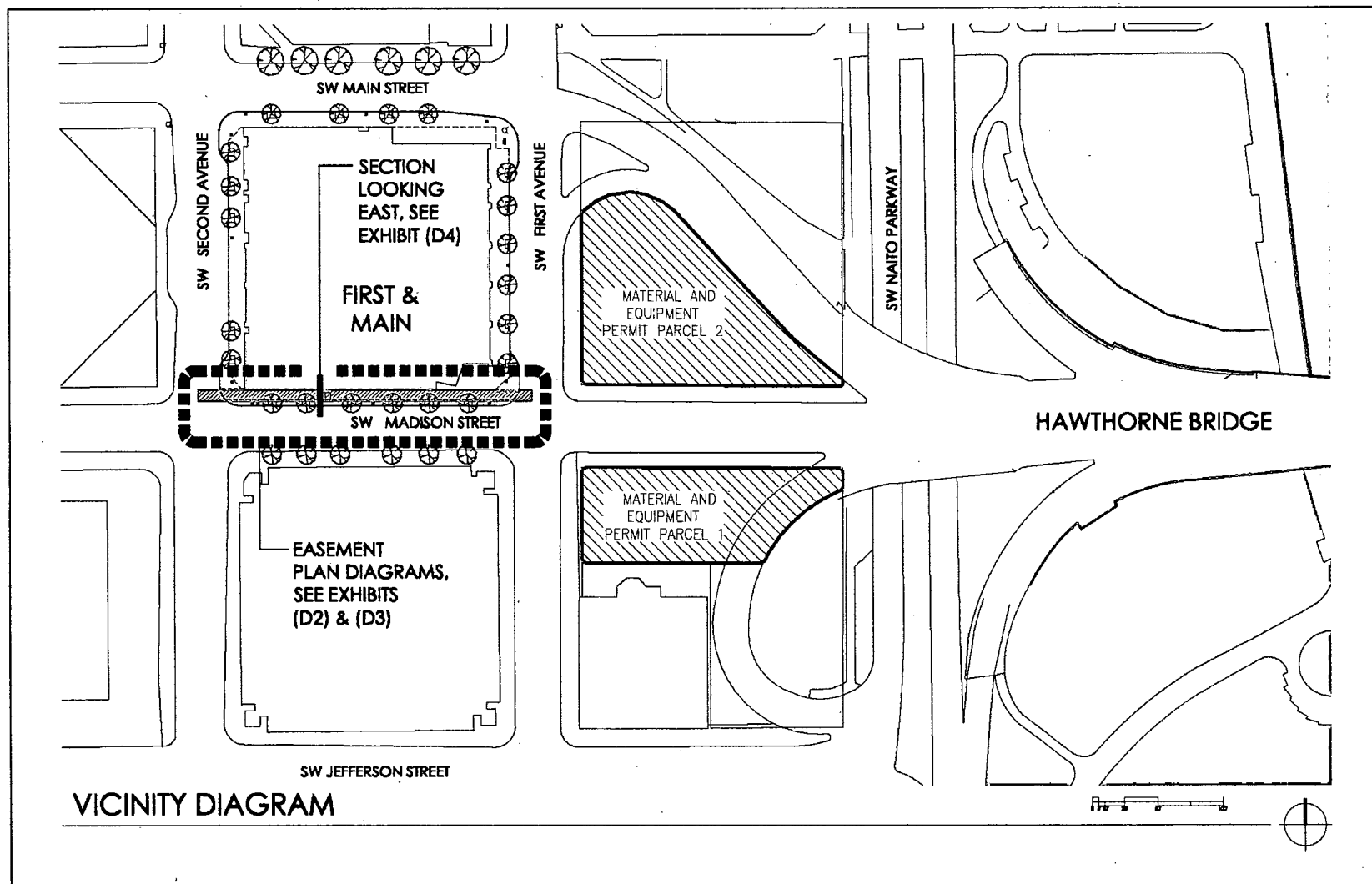


Exhibit E

AFTER RECORDING, RETURN TO:
John S Thomas
Multnomah Co Atty's Ofc
501 SE Hawthorne Blvd Ste 500
Portland OR 97214

TUNNEL EASEMENT AGREEMENT

THIS TUNNEL EASEMENT AGREEMENT (the "**Agreement**") is entered into this _____ day of _____, 20__, by Two Main Development LLC, a Delaware limited liability company ("**Grantor**") and Multnomah County, Oregon, a political subdivision of the State of Oregon ("**Grantee**").

RECITALS:

A. Grantor is the owner of certain real property located in the City of Portland, Multnomah County, Oregon, more particularly described on the attached **Exhibit A** (the "**Grantor's Property**"). Grantor is constructing a building on the Property (the "**Two Main Building**").

B. Grantee is the owner of certain real property located in City of Portland, Multnomah County, Oregon, more particularly described on the attached **Exhibit B** (the "**County Justice Property**") and on the attached **Exhibit C** (the "**County Court House Property**"). Justice Center building is located upon the County Justice Property (the "**Justice Center**"). The County intends to construct a new County Court House building on the County Court House Property (the "**New Court House**").

C. Grantee wishes to obtain a perpetual right-of-way easement through the subsurface portion of Grantor's Property for a continuous underground pedestrian tunnel ("**Tunnel**") to connect the Justice Center to the New Court House as more specifically described below.

D. Grantor is willing to grant such easement upon the terms and conditions of this Agreement.

AGREEMENTS:

1. **Grant of Tunnel Easement.** For valuable consideration, the receipt of which is hereby acknowledged, Grantor hereby grants and conveys to Grantee an exclusive, permanent, continuous, subsurface right of way easement as described in **Exhibits D-1 through D-5** attached hereto and incorporated herein by reference lying below the bottom face of Grantor's concrete slab at the approximate elevation of 32'-10" and above elevation 20'-10" located between the centerline of S.W. 1st Avenue and the centerline of S.W. 2nd Avenue (the "**Tunnel Easement**"). Grantor makes no covenants of seizen, right to convey, freedom from encumbrance or title as to any portion of the Tunnel Easement area outside Grantor's Property as described on the attached **Exhibit A**. Grantor intends to install shorings at the boundary of the Tunnel Easement area as illustrated in the permit drawings described in attached **Exhibit E**. In the event any of Grantor's shorings encroach into the Tunnel Easement area, then the Tunnel Easement area shall be deemed to run from the face of such encroaching shoring. The width of the Tunnel Easement may be extended to the south toward the centerline of SW Madison Street as required by codes and regulations applicable to the Tunnel at the time of construction of the Tunnel, provided that such extension shall not disturb or damage any improvements to Grantor's Property. Upon completion of Tunnel construction, the parties agree to execute and record an addendum to this Agreement to further define the Tunnel Easement boundaries. Grantee shall have the right to use the Tunnel Easement area for all purposes necessary or incidental to Grantee's planning, design, construction, operation, maintenance, use, modification, repair or replacement and improvement of the Tunnel. The Tunnel may be used for any legal purpose including but not limited to pedestrian access to and from the Justice Center and the New Courthouse. The Tunnel and all of its contents shall remain the property of Grantee and may be severed and removed from the Grantor's Property provided that any damage done by Grantor or its agents in the course of removal of Grantor's property shall be repaired by Grantor at its sole expense.

2. **Costs.** Each party, at their sole expense, shall maintain, repair, replace, reconstruct, and keep in a safe condition their improvements to the Grantor's Property, as may be appropriate, in accordance with generally accepted standards then existing for similar commercial property in Portland, Oregon. Each party hereby waives any claim against the other party for damage to their improvements to the Grantor's Property to the extent such damage is covered by the party's own property insurance. Each party shall be solely responsible for all costs of any type whatever with respect to (a) its own improvements to the Grantor's Property unless recoverable as contractual or tort damages for which the other party is legally responsible, (b) its property, liability and other insurance coverage, if any, it maintains with respect to the Grantor's Property and its improvements to the Grantor's Property. Grantor will be solely responsible for payment of any and all property taxes and other governmental assessments against the Grantor's Property. Grantee shall be solely responsible for the cost of correction of any adverse conditions unknown to Grantor such as the need to relocate utilities or remove rocks presently located within the Tunnel Easement area, and Grantor shall have no liability therefor.

3. **Grantor's Use.** Grantor makes no representations or warranties regarding the presence or absence of any utilities or other improvements in or above the Tunnel Easement area. Grantee shall at its expense, relocate any utilities and remove any detensioned tie backs located within the Tunnel Easement area in a manner acceptable to Grantor. Grantor has provided

Grantee with Grantor's permit drawings described in attached **Exhibit E** showing improvements Grantor intends to construct in the Tunnel Easement. Grantor shall be permitted to construct such improvements in the Tunnel Easement area and may modify such improvements to the extent necessary to address conditions encountered in the course of construction. If modifications to the plans are required, in making such modifications, Grantor shall, to the extent reasonably practicable, minimize interference with Grantee's Tunnel Easement.

4. **Grantee's Right of Entry.** Grantee shall have a right of entry through the sidewalk and street on the surface of Grantor's Property located above the Tunnel Easement, as is reasonably necessary or convenient for access to the Tunnel Easement area for the purpose of planning, design, construction, operation, maintenance, use, modification, repair or replacement and improvement of the Tunnel or to perform any other work on the Tunnel. Grantee shall use commercially reasonable efforts to minimize any disturbance to the use of Grantor's Property resulting from any such entry by Grantee. Grantee shall not disturb or damage any improvement to Grantor's Property including without limitation Grantor's electrical vault located above the Tunnel Easement area. If any improvements to Grantor's Property are disturbed or damaged by such an entry then Grantee shall restore all disturbance or damage comparable to the original condition as soon as reasonably possible. Grantee shall not access Grantor's improvements on the Grantor's Property from the Tunnel at any time.

5. **Nuisance or Endangerment.** Grantee shall not cause any nuisance or dangerous condition by its use of the Tunnel Easement or that unreasonably interferes with, or is an unreasonable disturbance or endangerment of, the safe and peaceful possession and intended commercial office use of the Grantor's Property. So long as Grantee is exercising its rights under paragraph 4 in accordance with paragraph 4, Grantee shall not be deemed to be in violation of this paragraph 5. Grantor shall not cause any nuisance or dangerous condition in its use of the Grantor's Property; nor shall Grantor unreasonably interfere with or unreasonably obstruction, disturb or endanger the safe and peaceful intended right-of-way use of the Tunnel. Each party acknowledges that among other damages, for which a party may be liable due to a breach of its obligations under this Agreement, is the increase in the cost of the other party's property and liability insurance resulting from any such breach.

6. **Legal Compliance.** Subject to properly contested requirements as described below, each party to this Agreement must comply with all laws, ordinances, rules and regulations ("**Legal Requirements**") applicable to their use of the Grantor's Property including, but not limited to, those relating to protection of the environment, zoning, building, fire, health and safety of any government or any agency, body or subdivision thereof and bearing on the construction, operation, ownership or use of the Grantor's Property and any or all improvements of the Grantor's Property. Compliance with any Legal Requirement that requires alteration, improvement, maintenance, repair or modification of property must be accomplished by and at the sole expense of the party, as the case may be, who has the obligation hereunder to maintain and repair the property affected by any such Legal Requirement. Each party must give prompt notice to the other party of any written notice received of the violation of any Legal Requirement affecting the party's property that is the subject of this Agreement. Notwithstanding the foregoing provisions, either party may, at such party's expense, defer compliance with and contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Legal Requirement affecting any portion of the Grantor's Property that such

party is obligated to maintain and repair, and the other party must reasonably cooperate with such party in such proceedings at the expense of the contesting party. The contesting party shall keep the other party informed of the status of such contest at all times.

7. **Liens and Encumbrances.** Grantee shall keep the Grantor's Property free of all liens and encumbrances arising from Grantee's activities under this Agreement.

8. **Approval by Grantor and City of Portland.** No construction work or any other activity within the Tunnel Easement area shall be commenced without Grantor's prior written consent. At least 30 days prior to any construction, work or any other activity by Grantee within the Tunnel Easement area, notification and plans and specifications for the same (the "**Tunnel Plans**") shall be submitted in writing to Grantor by Grantee for the sole purpose of allowing Grantor to determine whether the Tunnel Plans are in conformance with the terms of this Agreement. If Grantor determines that the Tunnel Plans are not in conformance with the terms of this Agreement, Grantor shall advise Grantee in writing within 30 days of receipt of such plans, specifying in detail the manner in which the Tunnel Plans do not so conform. Grantor shall be deemed to have approved the Tunnel Plans unless Grantor objects within such 30 day period. Grantor's review or approval of the plans will not be evidence of adequacy or sufficiency of Grantee's plans and designs nor whether Grantee's construction, work or activity is in conformance with Legal Requirements. Without limiting the foregoing, Grantees' use of the Tunnel Easement shall be expressly conditioned upon consent of the City of Portland to the encroachment of the Tunnel into the public right-of-way, which consent Grantee shall obtain and evidence in writing at no cost to Grantor. Grantor agrees to cooperate with Grantee to obtain such consent and all other approvals that may be required to construct the Tunnel.

9. **Repairs.** Grantor shall maintain in good repair the Grantor's Property including all improvements of the Grantor's Property to the extent affecting Grantee's Tunnel. Grantee shall maintain in good repair its Tunnel Property including all Tunnel Property improvements to the extent affecting Grantor's Property.

10. **Indemnification.** Subject to the limitations contained in the Oregon Constitution and The Oregon Tort Claims Act, Grantee shall protect, defend, indemnify, reimburse and hold Grantor harmless for, from and against any and all claims, demands, losses, damages, expenses and liabilities, including personal injury and for any damage to or loss or destruction of property, suffered by Grantor, its partners, members, shareholders, officers, directors, agents, employees, independent contractors, tenants and invitees, arising out of or resulting in any manner from the construction, operation, maintenance, use, modification, repair, replacement or improvement of the Tunnel Easement by Grantee, its agents, employees, independent contractors and invitees; provided however, that Grantor shall not be entitled to such indemnification for damage caused to Grantor or any third party by reason of the sole gross negligence or willful misconduct of Grantor.

11. **Abandonment.** If prior to construction of the Tunnel, Grantee shall transfer the County Court House Property for a use other than the construction and operation of a County Court House, then the unused Tunnel Easement shall terminate; provided that such termination shall not mitigate Grantee's duty to perform its obligations under this Agreement that arose or accrued prior to such termination. No other act or failure to act by Grantee shall be deemed an

abandonment of the Tunnel Easement other than a written statement of the County's intent to abandon the Tunnel Easement. This Easement may be abandoned by Grantee without removing the Tunnel from the Grantor's Property. However, Grantee shall, at its expense, seal, fill or otherwise secure the Tunnel in a manner proposed by Grantee and reasonably acceptable to Grantor. Grantor may reasonably withhold its consent to any proposal which poses a threat of future disturbance or damage to any improvements to Grantor's property.

12. **Benefits and Burdens.** This Tunnel Easement is appurtenant to and shall run with both the County Justice Property and the County Court House Property and shall inure to the benefit of Grantee, its successors and assigns and shall be binding upon the Grantor's Property as the servient estate.

13. **Remedies and Attorneys' Fees.** In the event of any breach of the provisions of this Tunnel Easement Agreement, the aggrieved party shall be entitled to exercise any remedy provided by law or equity, including the remedies of injunction and/or specific performance. In the event litigation is commenced to enforce the provisions of this Tunnel Easement Agreement, the prevailing party shall recover from the other party, in addition to all other costs and damages, reasonable attorneys' fees at trial, in arbitration or upon any appeal or petition for review thereof.

14. **Default and Remedies.** In the event a party determines that the other party is violating any requirements of this Agreement then the party must be given written notice to the other party of its alleged violation and an opportunity to correct its violation within thirty (30) days of the notice except in the event of an emergency. In such case the other party may either commence to correct the violation within such time period, in which event the complaining party may take no further action against the violator, or submit the issue of whether a violation exists to litigation, in which event the complaining party may take no action until the litigation is resolved. In the event of an emergency either party may take such actions as they in good faith determine necessary in the circumstances to protect their respective interests including if necessary reasonable self help action or an ex parte petition for provisional process from a court of competent jurisdiction. In the event of any violation of the provisions of this Agreement, the aggrieved party shall be entitled to exercise any remedy provided by law or equity other than termination of this Agreement, including the remedies of injunction and/or specific performance.

15. **Miscellaneous.** The invalidity of any part of this Agreement will not impair or affect in any manner the validity, enforceability or effect of the balance of this Agreement. As used herein, the singular includes the plural, and the plural the singular. The masculine and neuter each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and in no way limit any provisions of this Agreement. No restriction, condition, obligation, or provision contained in this Agreement may be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof that may occur. Nothing herein shall be construed as a waiver of the Grantee's future exercise of its power of eminent domain with respect to the Grantor's Property. Grantee hereby acknowledges that it does not intend to exercise its power of eminent domain with respect to the Grantor's Property so long as the Tunnel Easement provided for herein can reasonably be used by Grantee for the Grantee's purposes described in this Agreement. In the event the performance of any obligation under this

Agreement is delayed due to events beyond the reasonable control of a party then such obligations shall be excused during such delay up to a maximum 180 days.

16. **Notices.** Any notice under this Agreement shall be in writing and shall be effective when actually delivered, or if mailed, posted as certified mail, return receipt requested, postage prepaid to Grantor at Grantor's address for tax statements as shown on the real property tax records of Multnomah County, Oregon, and to Grantee at 401 N. Dixon, Portland Oregon, 97227, Attn: Facilities Director. Upon the request of either party, the other party shall execute and deliver to the requesting party an estoppel certificate respecting the status of the Tunnel Easement containing such information as is reasonably requested by the requesting party with respect to this Agreement. Each party shall provide any such requested certificate without 20 days of the request.

GRANTOR:

TWO MAIN DEVELOPMENT LLC,
a Delaware limited liability company

By: _____
Title: _____

GRANTEE:

MULTNOMAH COUNTY OREGON,
a political subdivision of the State of Oregon

By _____
Ted Wheeler
Chair, Board of County Commissioners

COUNTY OF

)
) **SS.**
)

Notary Public
My commission expires:
Commission No.:

COUNTY OF

$$\left. \begin{array}{l}) \\) \\) \end{array} \right\} \text{SS.}$$

Notary Public
My commission expires:
Commission No.:

EXHIBIT A

Grantor's Property

Block 10, PORTLAND ADDITION, in the City of Portland, County of Multnomah, State of Oregon.

EXCEPT from Lots 5, 6, 7 and 8 thereof, the Westerly 5 feet.

Subject to and excepting the rights of the public in and to any street, road, alley or public right of way.

County Court House Property

**All of Block 7, PORTLAND ADDITION TO THE CITY OF
PORTLAND, in the City of Portland, County of Multnomah and State
of Oregon**

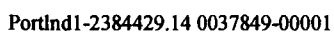


EXHIBIT D-1

Vicinity Diagram

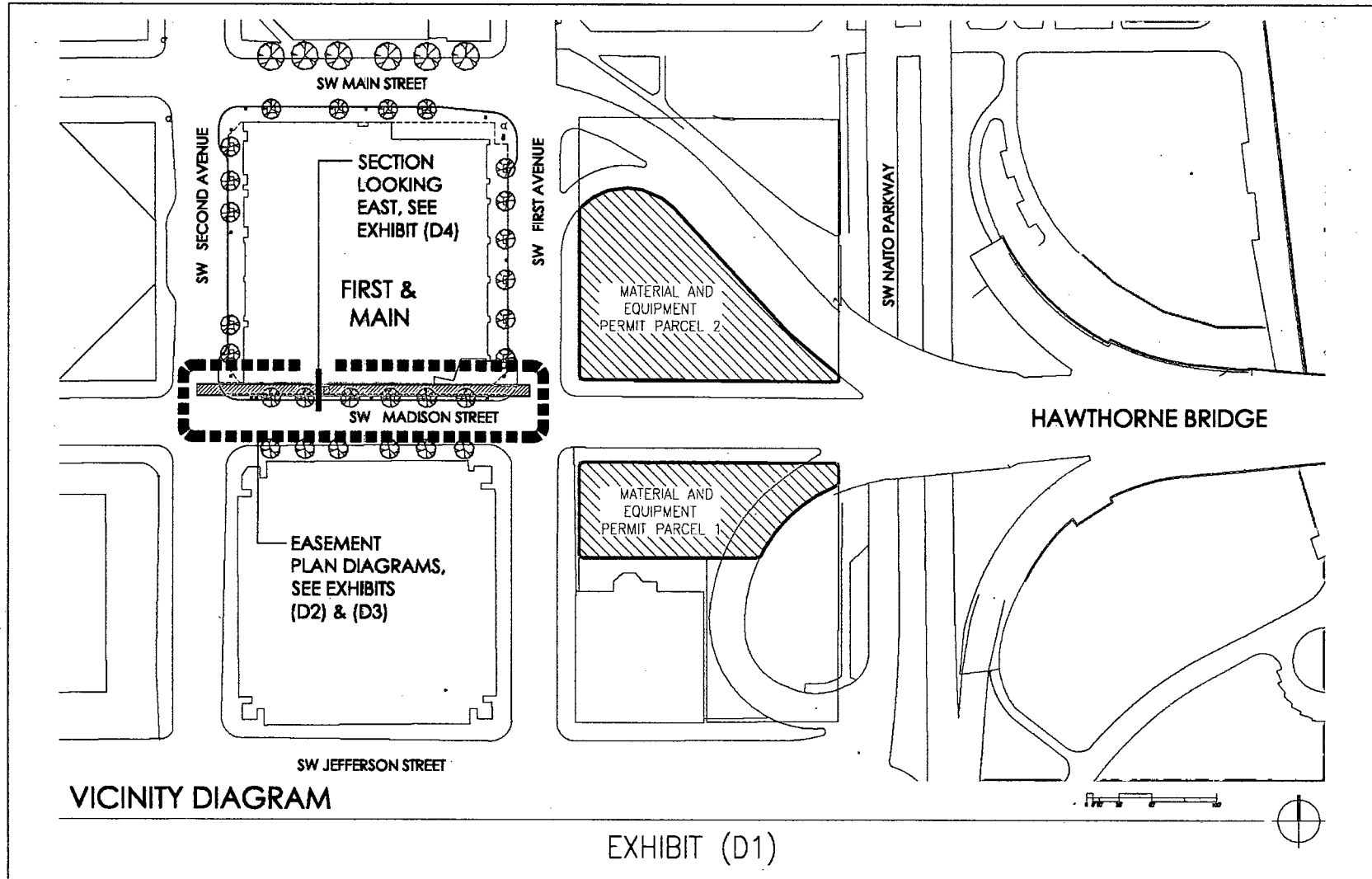


EXHIBIT D-2

Ground Plan

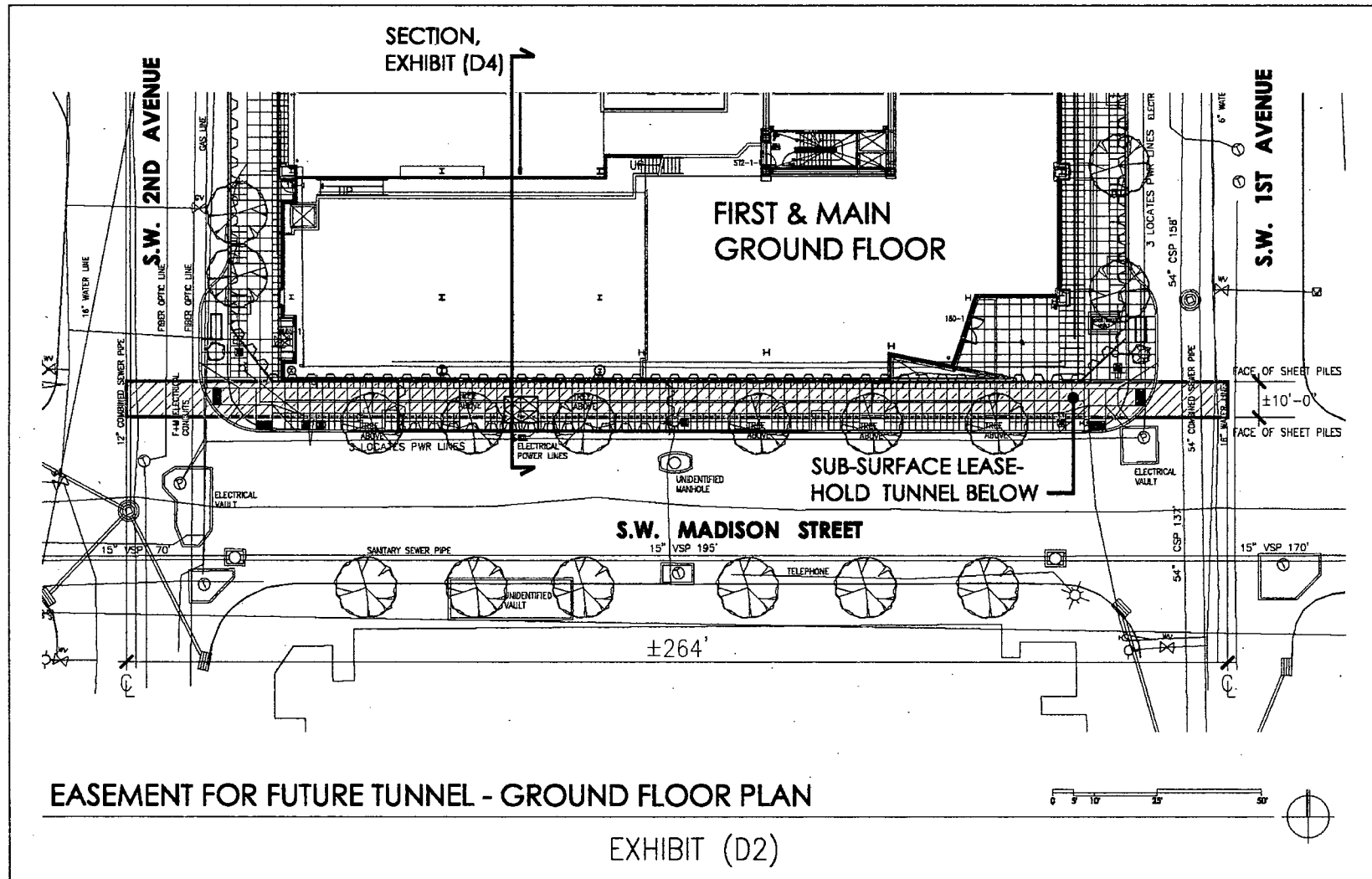


EXHIBIT D-3

Basement Plan

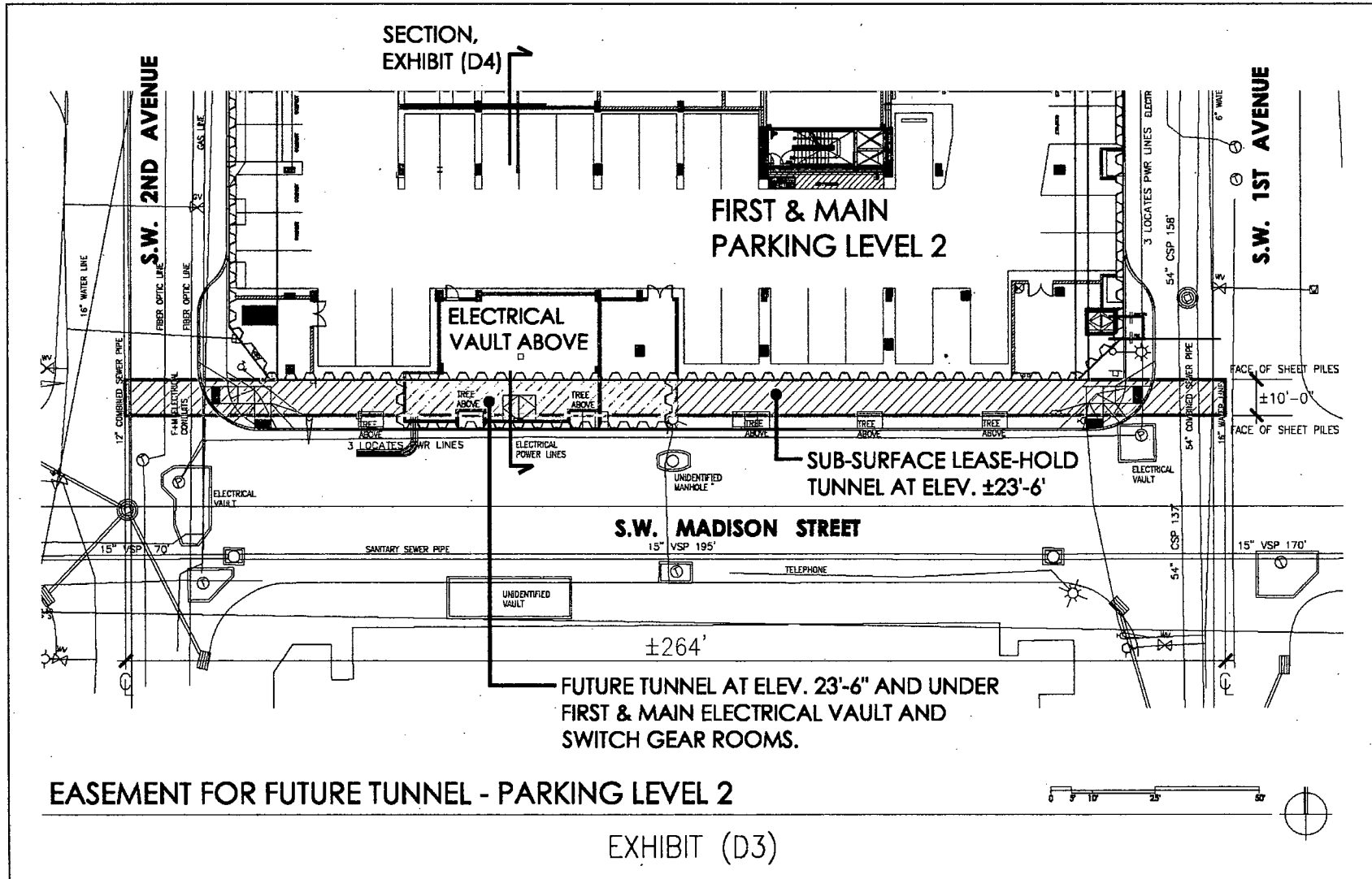


EXHIBIT D-4

Sections

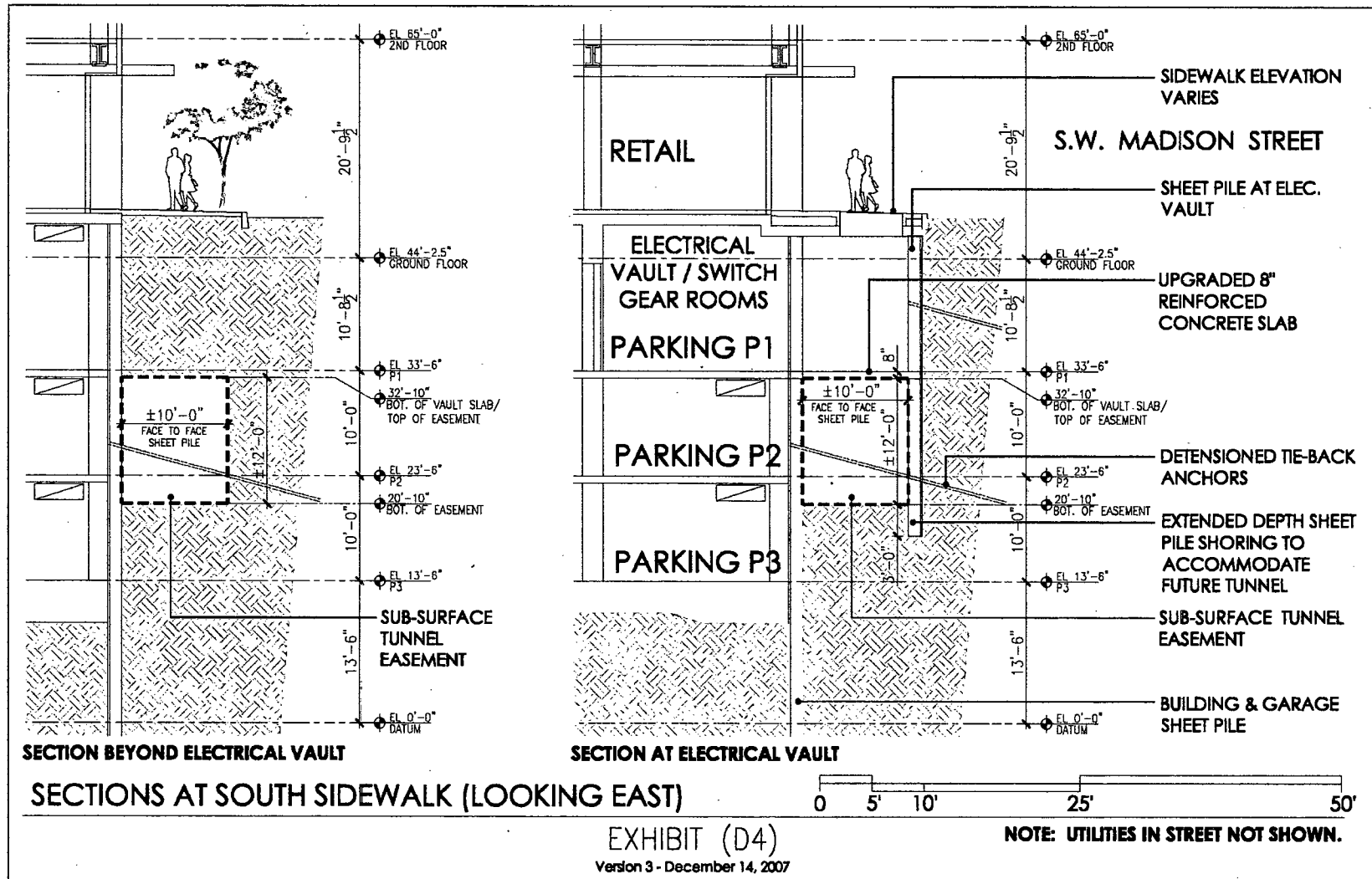






























EXHIBIT D-5
Legal Description

Tunnel Easement

(This is a preliminary description. Upon completion of a final description by Grantor, the parties shall initial such final description and Grantor shall replace this description with the final description.)

EXHIBIT E

ARCHITECTURAL SYMBOLS

<p>DETAIL REFERENCE</p>  <p>ELEVATION REFERENCE</p>  <p>ELEVATION REFERENCE</p>  <p>BUILDING SECTION REFERENCE</p>  <p>DETAIL REFERENCE</p>  <p>WALL SECTION REFERENCE</p>  <p>SECTION ELEVATION REFERENCE</p>  <p>SECTION REFERENCE</p>  <p>ROOM NAME AND NUMBER REFERENCE</p>  <p>DETAIL REFERENCE</p>  <p>ROOM NUMBER REFERENCE</p>  <p>WALL TYPE REFERENCE</p>  <p>SECTION REFERENCE</p>  <p>SECTION REFERENCE</p>  <p>RELATIVE ELEVATION</p>  <p>RELATIVE ELEVATION</p>  <p>RELATIVE ELEVATION</p>  <p>RELATIVE ELEVATION</p>  <p>RELATIVE ELEVATION</p>  <p>RELATIVE ELEVATION</p>  <p>RELATIVE ELEVATION</p>  <p>RELATIVE ELEVATION</p>  <p>RELATIVE ELEVATION</p>  <p>RELATIVE ELEVATION</p>  <p>RELATIVE ELEVATION</p>  <p>RELATIVE ELEVATION</p>  <p>RELATIVE ELEVATION</p>  <p>RELATIVE ELEVATION</p>  <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p> <p>RELATIVE ELEVATION</p>
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MATERIALS	
	LASH
	CHANEL
	CONCRETE
	ASPHALT
	STEEL
	ALUMINUM
	BRICK
	CONCRETE MASONRY LACES
	FRENCH WOOD / WINTER
	SOLID WOOD / SPRING
	BATT INSULATION
	RIGID INSULATION
	FINISHES
	GOLF / HOF
	GLASS
	GYPSUM BOARD
	SPICE MOUNTED OFFSHORE SHIPS

MASTER LIST OF ABBREVIATIONS
(NOTE: THIS SET DOES NOT CONTAIN ALL DENSE ITEM)

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DRAWING INDEX

VOLUME I

AC00	COVER SHEET	
AC01	GENERAL INFO / DISCREPANCY / RFP / CONTRACT	
AC02	BUILDING CODE ANALYSIS SHEET	
AC03	BUILDING CODE ANALYSIS SHEET	CONFIRMED
AC04	BUILDING CODE ANALYSIS SHEET	CONFIRMED
AC05	BUILDING CODE ANALYSIS SHEET	CONFIRMED
AC06	BUILDING CODE ANALYSIS SHEET	CONFIRMED
AC07	BUILDING CODE ANALYSIS SHEET	CONFIRMED
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STRUCTURAL	
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0002	GENERAL STRUCTURAL NOTES
0003	GENERAL FOUNDATION PLAN
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ARCHITECTURAL (CONTINUED)

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STRENGTH AND DURABILITY

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APR 20 1964

[illegible][illegible]

ED21 EQUIPMENT CONNECTIONS - ELECTRICAL
ED22 PARTIAL PLANS - ELECTRICAL
ED23 PARTIAL PLANS - ELECTRICAL

[illegible]

LANDSCAPE

L108	ROOF TERRACE PATTERNS PLAN
L101	ROOF TERRACE GRADING PLAN
L102	ROOF TERRACE LOCKUP PLAN
L103	ROOF TERRACE LOCKUP PLAN
L109	ROOF TERRACE LANDSCAPE DETAILS
L101	ROOF TERRACE LANDSCAPE DETAILS
L106	ROOF TERRACE PLANTING PLAN
L107	ROOF TERRACE PLANTING DETAILS
L108	ROOF TERRACE SUGGESTION PLAN
L109	ROOF TERRACE SUGGESTION

SPRINGER

FOOT STRESS DRAINAGE (REFERENCE ONLY)

- 1 OF 8 COVER SHEET
- 2 OF 8 PLAN AND PROFILE
- 3 OF 8 PLAN AND PROFILE
- 4 OF 8 PLAN AND PROFILE
- 5 OF 8 PLAN AND PROFILE
- 6 OF 8 CURB ROLLING DETAILS
- 7 OF 8 CURB ROLLING DETAILS
- 8 OF 8 DETAILS
- 12-1 STREET LIGHTING PLAN
- 12-2 STREET LIGHTING PLAN
- 12-3 STREET LIGHTING DETAILS

GBD
ARCHITECTS
1120 NW Couch Street
Suite 300, Portland
OR 97109
Tel: (503) 224-9656
Fax: (503) 299-6273
www.gbdaarchitects.com

FIRST & MAIN
100 SW MAIN ST.
PORTLAND, OR 97201

SHOENSTEIN EJECT SERVICE, L.P.
GRINDING EDEN DEVELOPMENT
 One SW Columbia St., Suite 300
 Portland, OR 97238

Notice of Subsequent Payment Deadline: The taxpayer will allow the owner to begin payment within 30 days after the date of closing or collection is completed. Notice of Absence Lending Cycle: The borrower will allow the owner to request the initiation of litigation or collection to begin within other than 30-day action. Litigation or collection for the contract that be classified as follows: Such contract needs action on or the last day of the applicable month.

LANDSCAPE

L108	ROOF TERRACE PATTERNS PLAN
L101	ROOF TERRACE GRADING PLAN
L102	ROOF TERRACE LOCKUP PLAN
L103	ROOF TERRACE LOCKUP PLAN
L109	ROOF TERRACE LANDSCAPE DETAILS
L101	ROOF TERRACE LANDSCAPE DETAILS
L106	ROOF TERRACE PLANTING PLAN
L107	ROOF TERRACE PLANTING DETAILS
L108	ROOF TERRACE SUGGESTION PLAN
L109	ROOF TERRACE SUGGESTION

SPRINGER

FOOT STRESS DRAWINGS (REFERENCE ONLY)

- 1 OF 8 COVER SHEET
- 2 OF 8 PLAN AND PROFILE
- 3 OF 8 PLAN AND PROFILE
- 4 OF 8 PLAN AND PROFILE
- 5 OF 8 PLAN AND PROFILE
- 6 OF 8 CURB ROLLING DETAILS
- 7 OF 8 CURB ROLLING DETAILS
- 8 OF 8 DETAILS
- 12-1 STREET LIGHTING PLAN
- 12-2 STREET LIGHTING PLAN
- 12-3 STREET LIGHTING DETAILS

REVISIONS

DATE
September 14, 2007

PROJECT NUMBER
20051010

SHEET TITLE
GENERAL INFO
DRAWING INDEX

SCALE
AS NOTED

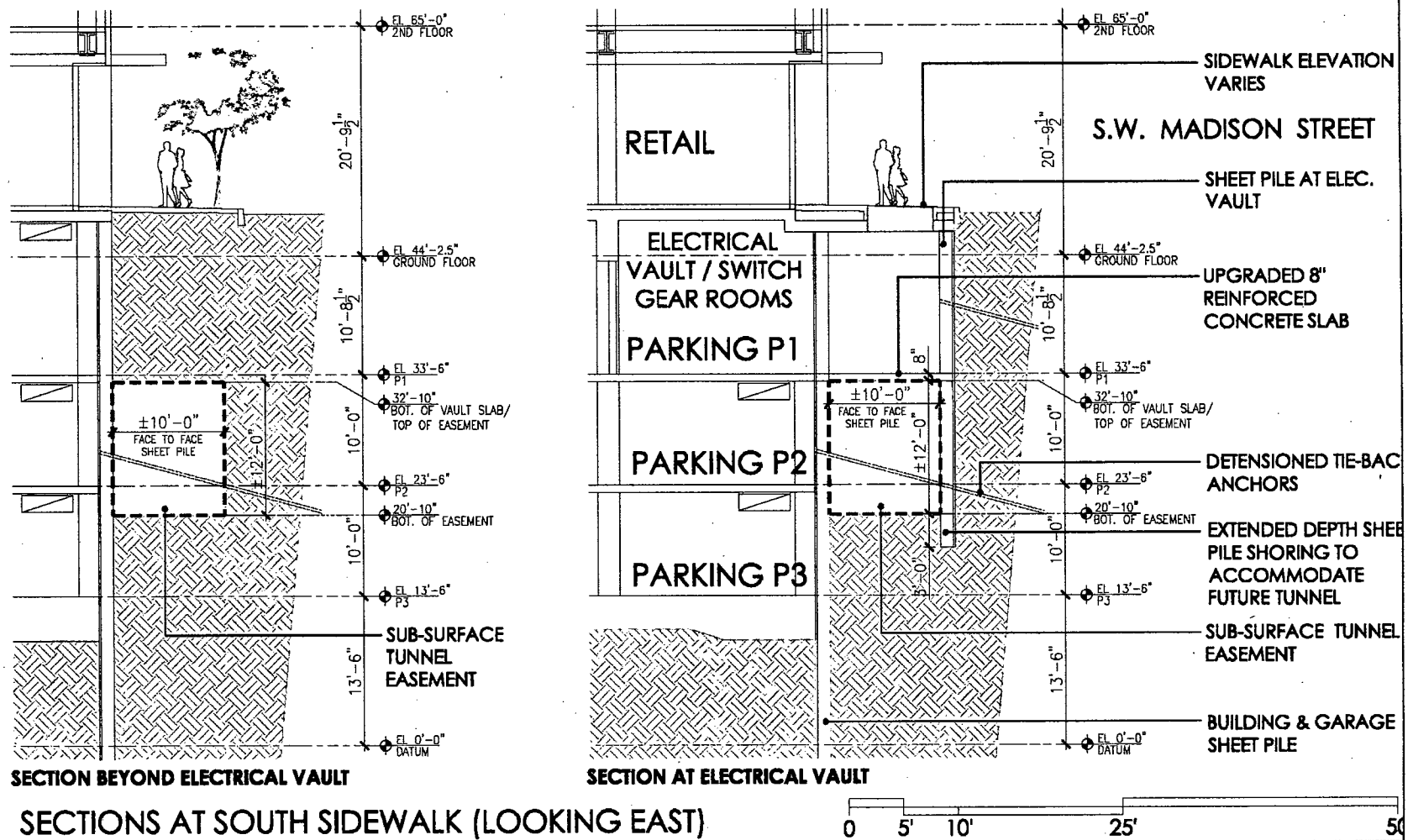
A001

Page 10 of 10

75% CD CHECKSET | SEPTEMBER 14, 2007

EXHIBIT F

Illustration of Initial Accommodations



NOTE: UTILITIES IN STREET NOT SHOWN.

EXHIBIT G

PERMIT (MC PERMIT # _____)

This is an agreement between Multnomah County ("County"), by and by Two Main Development LLC ("**Two Main**") and Hoffman Construction Company ("**Contractor**") collectively ("**Permittees**") effective as of December 11, 2007 ("**Effective Date**").

Recitals

A. Two Main has contracted with Contractor to build a building on Two Main's property located at 100 SW Main in the City limits of Portland, Oregon.

B. Permittees desire to use the north 75' of Block 8, Portland (Parcel 1) and that portion of Block 7, Portland lying south and east of the bridge ramp located thereon (Parcel 2) except the bridge ramp improvements and slopes located on each parcel ("**Permit Property**") for the purpose of staging for construction and for storage of construction material and equipment and parking of construction vehicles required to construct the. The approximate location of the Permit Property is shown on Exhibit A.

THE PARTIES AGREE AS FOLLOWS:

1. Recitals are Contractual. The above listed Recitals are contractual and are incorporated by this reference.

2. Grant of Revocable Permit. Permittees are granted authority to use the Permit Property on the terms and conditions set forth herein. Permittees accept the property AS IS. County shall not be liable for any defects in the property, known or unknown.

3. Term. The term of this Permit is as follows:

Parcel 1: From the Effective Date through February 31, 2010

Parcel 2: From the Effective Date through August 31, 2008 and thereafter month to month.

During the term, County may, on 5 work day's notice (or in the event of an emergency, on 24 hour's notice) require Permittees to vacate such portions of the Permit Property as may be necessary for the County to perform maintenance, repair, demolition or other work on County's bridge ramp improvements located on and adjacent to the Permit Property.

4. Scope of the Permit. Permittees shall use the Permit Property for the purpose of staging for construction and for storage of construction material and equipment; staging of demolition receptacles; and parking of Permittees' vehicles and for no other purpose. Use of the Permit Property by Permittees shall be subject to the following terms and conditions:

a. County personnel shall have access to the Permit Property on reasonable notice to Permittees.

b. No vehicles in excess of 40,000 pounds, gross vehicle weight, will be allowed on the Permit property without prior written approval of the County.

c. Permittees shall be solely responsible for costs associated with use of the Permit Property.

- d. Permittees shall comply with all applicable federal, state and local laws and regulations.
- e. Permittees shall obtain all necessary permits or approvals as may be necessary for the use of the Permit Property. Permittees agrees to indemnify the Commission as provided above for any damages caused by the violation thereof of any permits or approvals that may otherwise be required.
- f. Permittees shall not allow any lien of any kind, type or description to be placed or imposed upon the Permit Property.
- g. Permittees shall be responsible, at Permittees' cost, for providing screening between Parcel 1 and the adjacent Veritable Quandary restaurant acceptable to the owner of the Veritable Quandary during the term of the Permit as it relates to Parcel 1.

5. Maintenance; Restoration of County's Property on Termination. Permittees shall be solely responsible, at their cost, for the maintenance and repair of the Permit Property as may be reasonably necessary to maintain the same in a safe and suitable condition for the purposes set forth herein. At the expiration of this Permit, all improvements and alterations to the Permit Property constructed by Permittees shall be removed at Permittees' sole expense and the Permittees shall restore the Permit Property to the condition it was in prior to the Effective Date.

6. Damage to County's Property. Any damage to County's property resulting from the use of the Permit Property shall be immediately reported to County in writing and repaired by Permittees at Permittees' sole expense and County's sole satisfaction.

7. Indemnity and Insurance. Permittees agree to indemnify, defend and hold County harmless from and against all liability, damage loss, and costs of any nature whatsoever, including attorney fees, arising from or relating to the use of the Permit Property by Permittees and Permittees' agents, employees, independent contractors, licensees and invitees and any other person whether or not such use is permissive. Permittees shall provide at their own expense and keep in force during the Term of the Permit, naming County insured, a commercial general liability insurance policy or such successor comparable form of coverage (hereinafter referred to as a "Liability Policy") written on a "per occurrence basis," including, without limitation, blanket contractual liability coverage, broad form property damage, independent contractor's coverage, and personal injury coverage, protecting County and Permittees against liability occasioned by any covered occurrence on or about the Permit Property. Such policy shall be written by an insurance company acceptable to County in County's sole discretion and licensed to do business in the State of Oregon and shall provide coverage limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily or personal injury (including death) and property damage combined, subject to a commercially reasonable deductible. Prior to the time such insurance is first required to be carried by Permittees and thereafter, Permittees agree to deliver to County a certificate evidencing such insurance coverage. Said certificate shall contain an endorsement that such insurance may not be canceled except upon ten (10) days' prior written notice to County. Any damage to County's Property or the Permit Property resulting from the use of the License Property shall be promptly reported to County and repaired by Permittees at Permittees' sole expense.

8. Hazardous Materials.

a. No hazardous materials shall be stored or used on the Permit Property except those typically stored or used in the operation of the activities allowed under this Permit, provided however that such storage or use shall comply with all applicable federal, state and local laws thereto. materials shall be except in compliance with all federal, state and local laws applicable thereto. Upon the expiration or termination of this Permit,

Permittees shall remove immediately all such materials from the Permitted Property. As used herein, the term "**hazardous materials**" means any hazardous or toxic substance, material or waste which is now or hereafter the subject of Governmental Regulations, including without limitation any material or substance which is (A) defined as a "hazardous waste," under Oregon Revised Statutes ("**ORS**") 465.003 and ORS 466.005, (B) defined as a "toxic substance" under ORS 465.003, (C) defined as a "hazardous substance," under ORS 465.200, (D) defined as a "PCB" under ORS 466.505, (E) defined as a "hazardous material" under ORS 465.605, (F) designated as a "hazardous substance," "hazardous waste" or "hazardous material" by the Environmental Quality Commission, (G) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act 33 U.S.C. § 1251 et. seq., (33 U.S.C. § 1321) or as listed pursuant to § 307 of the Federal Water Pollution Control Act (33 U.S.C. § 1317), (H) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 9601), (I) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq., or (J) identified as a "chemical of interest" by the Federal Department of Homeland Security.

9. Taxes Permittees shall be responsible for all ad valorem taxes assessed against the Permit Property during the term of this Permit. If Permittees are in possession and control of the Parcel 1 or Parcel 2 pursuant to this Permit on July 1 of any year during which this Permit is in effect such parcel shall be taxable for ad valorem tax purposes for tax year beginning January 1 of such year and Permittees shall pay the full year of taxes regardless of whether Permittees are in possession and control of the such parcel for the full tax year.

10. Miscellaneous. All exhibits referenced in this Permit are incorporated herein. Any amendment or alteration to this Permit shall only be in writing and shall be signed by each party to the Permit. This Permit shall be governed by and construed in accordance with the laws of the State of Oregon. In the event of litigation, exclusive venue shall lie in Multnomah County, Oregon. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11. No Recordation. This Permit shall not be recorded.

12. Notice. Notices under this Permit shall be deemed to be properly served if delivered in writing via facsimile or by certified mail with return receipt requested to the following addresses or such other places as the parties reasonably designate:

To COUNTY: Multnomah County Department of Community Services
Land Use and Transportation Program
Right-of-Way Permit Section – Alan Young
1600 SE 190th Avenue
Portland, Oregon 97233-5910
503.988.3389 Facsimile

To PERMITTEES: Two Main Development LLC
c/o Shorenstein Realty Services, LP
555 California Street, 49th Floor
San Francisco, CA 94104
Attn: Corporate Secretary

415-772-7148 Facsimile

With a copy to: Todd Sklar
c/o Shorenstein Realty Service, LP
555 California Street, 49th Floor
San Francisco, CA 94104

and: Hoffman Construction Company
805 SW Broadway
Portland, OR

13. Project Managers. On-site project manager for Permittees is Stephanie Coyle who can be contacted by phone at 503.221.8880. County contact representative is Tony Lester, Multnomah County Bridge Shop Maintenance Supervisor, (503) 988-3757 ext 224, or cell (503) 539-3809.

14. Consideration. The consideration for this Permit is the granting of a tunnel easement to Multnomah County on Two Main's property by Two Main.

IN WITNESS WHEREOF, the parties have caused this Permit to be executed in duplicate on the dates shown below.

Permittee, TWO MAIN DEVELOPMENT LLC

Name/Title _____

Date: _____

Permittee, HOFFMAN CONSTRUCTION

Name/Title _____

Date: _____

County, MULTNOMAH COUNTY

Ted Wheeler, Chair

Date: _____

Reviewed

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY

By: _____
John S. Thomas

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 07-193

Approving Agreement with Two Main Development LLC for a Tunnel Easement between the Justice Center and the Courthouse Site and Granting Permits for Construction Staging

The Multnomah County Board of Commissioners Finds:

- a. By Resolution 06-203 adopted December 14, 2006 the Board declared the North Hawthorne Bridgehead block to be the preferred site for a new Multnomah County courthouse and directed Facilities and Property Management (Facilities) to, among other things, negotiate for a tunnel easement agreement through Block 10 between the new courthouse site and the Justice Center suitable for inmate transport.
- b. Agreement has now been reached with the owners of Block 10 by which the owners have agreed to provide a tunnel easement to the County in the right of way of Madison Avenue adjacent to the new office building currently under construction on Block 10. The owners have a property interest in the right of way subject to the rights of the City of Portland to use the right of way for a city street.
- c. The tunnel easement agreement provides that the County will reimburse the owners for the actual cost of improvements necessary to accommodate the easement. The estimated cost of the improvements is \$150,000 to \$200,000. Other than reimbursement of the owners' costs, the owners have agreed to grant the easement without monetary consideration from the County.
- d. The owners have requested, in exchange for granting the tunnel easement, that the owners have temporary use of the surplus area of North Hawthorne Bridgehead and the north 75' of the South Hawthorne Bridgehead for construction staging for the new building being constructed on Block 10. Facilities, in consultation with Transportation, has determined that these properties are surplus to any county use for the periods set forth in the attached permit.
- e. It is in the best interest of Multnomah County to approve the attached agreement.

The Multnomah County Board of Commissioners Resolves:

1. The Board approves the attached agreement for a tunnel easement through Lot 10 to serve the Justice Center and the new courthouse site and for a permit for the temporary use by Two Main Development LLC of portions of the Hawthorne

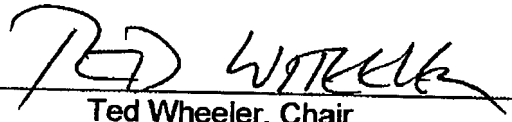
Bridgehead blocks for the periods set forth in the agreement. The Board declares that such portions of the Hawthorne Bridgehead blocks are surplus to any County use for the periods set forth in the agreement.

2. The Chair is authorized to execute an agreement substantially in the form attached to this resolution.

ADOPTED this 20th day of December 2007.

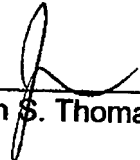


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
John S. Thomas, Deputy County Attorney

SUBMITTED BY:
Carol M. Ford, Director, Dept of County Management

ORIGINAL

**AGREEMENT TO GRANT TUNNEL EASEMENT, PROVIDE FOR INITIAL
ACCOMMODATION AND REIMBURSEMENT AND PERMIT FOR MATERIAL
AND EQUIPMENT STAGING AREA**

THIS AGREEMENT ("Agreement") is entered into as of December 11, 2007, by and between **TWO MAIN DEVELOPMENT LLC**, a Delaware limited liability company ("**Two Main**"), and **MULTNOMAH COUNTY, OREGON**, a political subdivision of the State of Oregon (the "**County**").

RECITALS

- A.** Two Main is the owner of certain real property located in Multnomah County, Oregon more particularly described on the attached **Exhibit A** (the "**Property**").
- B.** Two Main is constructing a high rise office building on the Property (the "**Two Main Building**").
- C.** County is the owner of certain real property located in Multnomah County, Oregon, more particularly described on the attached **Exhibit B** (the "**County Justice Property**") and on the attached **Exhibit C** (the "**County Court House Property**").
- D.** County desires the option to construct a new County Court House on the County Court House Property.
- E.** County desires to obtain a perpetual right of way easement under the surface of and through the Property for the potential future construction, operation, maintenance, use, modification, repair, replacement and improvement of an underground pedestrian tunnel (the "**Tunnel**") between the County Justice Property and the County Court House Property.
- F.** Two Main desires to obtain a permit from County for construction staging and storage use that certain real property located in Multnomah County, Oregon more particularly indicated on the attached **Exhibit D** and **Exhibit G** (the "**Permit Area**").

AGREEMENT

1. TUNNEL EASEMENT. Two Main shall grant to County an exclusive permanent subsurface easement by Tunnel Easement Agreement in the form attached as **Exhibit E** the "**Tunnel Easement Agreement**"). Two Main shall execute and deliver the Tunnel Easement Agreement upon reimbursement of all sums due under Section 2.2 hereof.

2. INITIAL ACCOMMODATION.

2.1 Initial Accommodation. In the design and construction of the Two Main Building, Two Main shall make initial accommodation for the potential future Tunnel, as

depicted on the attached **Exhibit F ("Initial Accommodation")**, which Initial Accommodation includes without limitation:

- (a) Spanning, rather than on-grade, slab floor at Two Main electrical vault.
- (b) Lengthening of curb side sheet shoring at Two Main electrical vault.
- (c) Delay of construction operations to accommodate the accommodations described in Section 2.1(a) and (b) above. The parties agree that as of the date of this Agreement there has been a delay of construction operations chargeable to the County resulting from the execution of this agreement. The exact cost of such delay has not yet been determined but is currently estimated to be approximately \$15,000. The parties further agree that any further delay contemplated herein is delay caused by circumstances that arise in the course of construction and are unforeseen by Two Main on the date of execution of this agreement.

2.2 Reimbursement for Initial Accommodation. County shall reimburse Two Main for all costs of Initial Accommodation, including, without limitation, management, design, permitting and construction. Two Main shall invoice County and County shall pay such cost on a "cost to date" basis. Payment shall be due within 30 days of receipt of the invoice. Invoices shall identify in detail the costs included in each such invoice. County shall have the right to audit such invoices at the sole cost and expense of the County. Two Main agrees to cooperate in providing such documents and information as are necessary for County to complete its audit. Invoices shall be submitted to County upon the occurrence of each of the following events: (a) execution of this Agreement for costs incurred prior to execution of this Agreement, and (b) completion of construction of the Initial Accommodation. In the event that Two Main becomes aware of circumstances that may cause a delay of construction operations under paragraph 2.1 (c) above, Two Main will, as soon as practical, advise County in writing of the circumstances. Two Main will thereafter provide to County, within a reasonable period of time after request, updated information concerning the delay and cost of the delay to the extent available. County shall have the right at any time after receipt of notice of delay to terminate this agreement by notice in writing to Two Main. In the event of such termination, County shall pay to Two Main, within 30 days of such termination, all unpaid costs for Initial Accommodation incurred by Two Main to the date of such termination and any additional reasonable costs required to be incurred by Two Main as a result of such termination. Such termination shall not affect Two Main's rights under the Permit granted to Two Main under this Agreement.

3. PERMIT FOR MATERIALS AND EQUIPMENT STAGING AREA. County shall grant to Two Main a Permit for construction staging and storage use the two Staging Areas indicated on **Exhibit D-1** in the form attached as **Exhibit G (the "Permit")**. Two Main and County shall execute duplicate originals of the Permit upon execution hereof.

4. DEFAULT AND REMEDIES. If either party neglects or refuses to carry out this Agreement according to its terms, the other party shall be entitled to such remedies for breach of contract as may be available under applicable law; including (without limitation) the remedy of specific performance.

5. **GENERAL PROVISIONS.**

5.1 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties, and their respective successors, and assigns.

5.2 **Time of Essence.** Time is of the essence of each and every provision of this Agreement.

5.3 **Notices.** All demands or notices required or permitted to be given under this Agreement shall be in writing. Notices may be served by certified or registered mail, postage paid with return receipt requested; by nationally recognized private overnight courier, prepaid; by telex, facsimile, or other telecommunication device capable of transmitting or creating a written record (provided that a copy is also sent by U.S. Mail, first class); or personally. Mailed notices shall be deemed delivered five (5) days after mailing, properly addressed. Couriers notices shall be deemed delivered on the date that the courier warrants that delivery shall occur. Telex, facsimile or telecommunicated notices shall be deemed delivered when receipt is either confirmed by confirming transmission equipment or acknowledged by the addressee or its office. Personal delivery shall be effective when accomplished. Unless a party changes its address by giving notice to the other party as provided herein, notices shall be delivered to the parties at the following address:

Two Main: Two Main Development LLC
c/o Shorenstein Realty Service, LP
555 California Street, 49th Floor
San Francisco, CA 94104
Attn: Corporate Secretary

With a copy to: Todd Sklar
c/o Shorenstein Realty Services, LP
555 California Street, 49th Floor
San Francisco, CA 94104

County: Multnomah County, Oregon
401 N. Dixon, Portland Oregon, 97227
Attn: Facilities Director

With a copy to: Multnomah County Attorney
501 SE Hawthorne Blvd Ste 500
Portland OR 97214

5.4 **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

5.5 **Attorneys' Fees.** Each party shall pay its own attorney's fees incurred in the preparation of this Agreement, the Tunnel Easement Agreement, and the Permit. In the event suit or action is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on any appeal, and on any petition for review, in addition to all other sums provided by law.

5.6 **Prior Agreements.** This Agreement supersedes and replaces all written and oral agreements previously made or existing between the parties (including, without limitation, all previous letters of intent and addenda thereto and all verbal agreements and understandings).

5.7 **Applicable Law.** This Agreement shall be construed, applied, and enforced in accordance with the laws of the state of Oregon.

5.8 **Changes in Writing.** This Agreement and any of its terms may only be changed, waived, discharged, or terminated by a written instrument signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

5.9 **Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

TWO MAIN DEVELOPMENT LLC
a Delaware Limited Liability Company

By _____
Title _____

MULTNOMAH COUNTY OREGON,
a political subdivision of the State of Oregon

By TED WHEELER
Ted Wheeler
Chair

5.5 **Attorneys' Fees.** Each party shall pay its own attorney's fees incurred in the preparation of this Agreement, the Tunnel Easement Agreement, and the Permit. In the event suit or action is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on any appeal, and on any petition for review, in addition to all other sums provided by law.

5.6 **Prior Agreements.** This Agreement supersedes and replaces all written and oral agreements previously made or existing between the parties (including, without limitation, all previous letters of intent and addenda thereto and all verbal agreements and understandings).

5.7 **Applicable Law.** This Agreement shall be construed, applied, and enforced in accordance with the laws of the state of Oregon.

5.8 **Changes in Writing.** This Agreement and any of its terms may only be changed, waived, discharged, or terminated by a written instrument signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

5.9 **Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

TWO MAIN DEVELOPMENT LLC
a Delaware Limited Liability Company

By _____

Title _____

Todd Sklar
Vice president

MULTNOMAH COUNTY OREGON,
a political subdivision of the State of Oregon

By _____

Ted Wheeler
Chair

Exhibit A	Property
Exhibit B	County Justice Property
Exhibit C	County Court House Property
Exhibit D	Staging Area
Exhibit E	Tunnel Easement Agreement
Exhibit F	Illustration of Initial Accommodations
Exhibit G	Permit

County Justice Property

All of Block 25, PORTLAND ADDITION TO THE CITY OF PORTLAND, in the City of Portland, County of Multnomah and State of Oregon

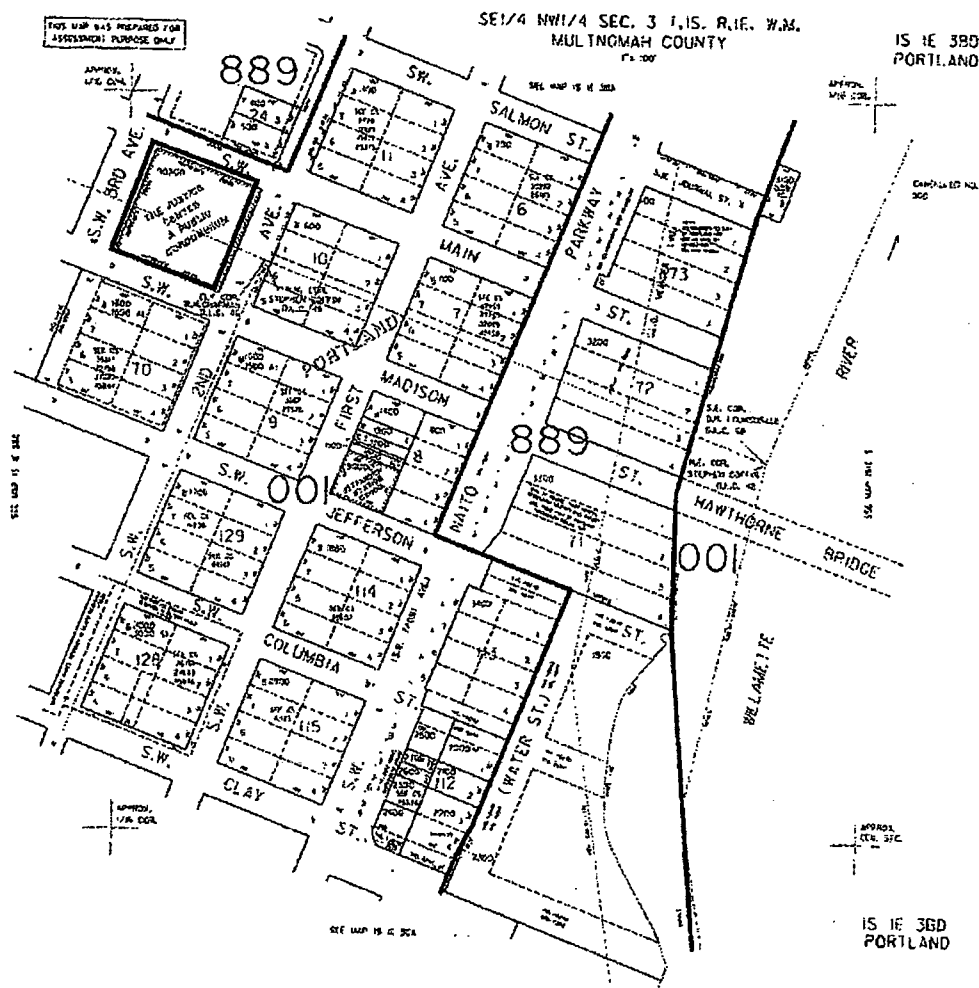


EXHIBIT D

Staging Area

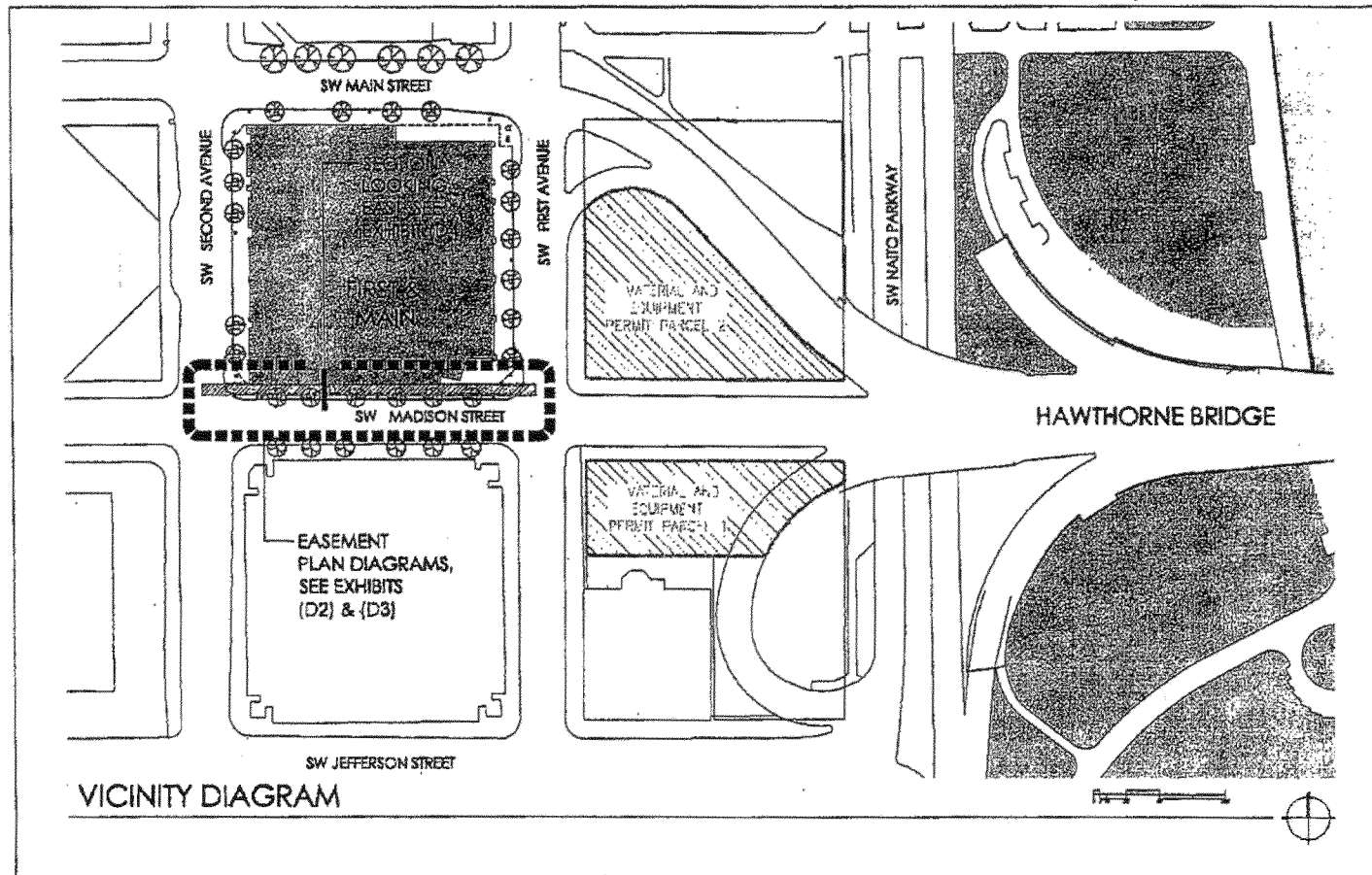


Exhibit E

AFTER RECORDING, RETURN TO:
John S Thomas
Multnomah Co Atty's Ofc
501 SE Hawthorne Blvd Ste 500
Portland OR 97214

TUNNEL EASEMENT AGREEMENT

THIS TUNNEL EASEMENT AGREEMENT (the "**Agreement**") is entered into this _____ day of _____, 20__, by Two Main Development LLC, a Delaware limited liability company ("**Grantor**") and Multnomah County, Oregon, a political subdivision of the State of Oregon ("**Grantee**").

RECITALS:

A. Grantor is the owner of certain real property located in the City of Portland, Multnomah County, Oregon, more particularly described on the attached **Exhibit A** (the "**Grantor's Property**"). Grantor is constructing a building on the Property (the "**Two Main Building**").

B. Grantee is the owner of certain real property located in City of Portland, Multnomah County, Oregon, more particularly described on the attached **Exhibit B** (the "**County Justice Property**") and on the attached **Exhibit C** (the "**County Court House Property**"). Justice Center building is located upon the County Justice Property (the "**Justice Center**"). The County intends to construct a new County Court House building on the County Court House Property (the "**New Court House**").

C. Grantee wishes to obtain a perpetual right-of-way easement through the subsurface portion of Grantor's Property for a continuous underground pedestrian tunnel ("**Tunnel**") to connect the Justice Center to the New Court House as more specifically described below.

D. Grantor is willing to grant such easement upon the terms and conditions of this Agreement.

Grantee with Grantor's permit drawings described in attached **Exhibit E** showing improvements Grantor intends to construct in the Tunnel Easement. Grantor shall be permitted to construct such improvements in the Tunnel Easement area and may modify such improvements to the extent necessary to address conditions encountered in the course of construction. If modifications to the plans are required, in making such modifications, Grantor shall, to the extent reasonably practicable, minimize interference with Grantee's Tunnel Easement.

4. **Grantee's Right of Entry.** Grantee shall have a right of entry through the sidewalk and street on the surface of Grantor's Property located above the Tunnel Easement, as is reasonably necessary or convenient for access to the Tunnel Easement area for the purpose of planning, design, construction, operation, maintenance, use, modification, repair or replacement and improvement of the Tunnel or to perform any other work on the Tunnel. Grantee shall use commercially reasonable efforts to minimize any disturbance to the use of Grantor's Property resulting from any such entry by Grantee. Grantee shall not disturb or damage any improvement to Grantor's Property including without limitation Grantor's electrical vault located above the Tunnel Easement area. If any improvements to Grantor's Property are disturbed or damaged by such an entry then Grantee shall restore all disturbance or damage comparable to the original condition as soon as reasonably possible. Grantee shall not access Grantor's improvements on the Grantor's Property from the Tunnel at any time.

5. **Nuisance or Endangerment.** Grantee shall not cause any nuisance or dangerous condition by its use of the Tunnel Easement or that unreasonably interferes with, or is an unreasonable disturbance or endangerment of, the safe and peaceful possession and intended commercial office use of the Grantor's Property. So long as Grantee is exercising its rights under paragraph 4 in accordance with paragraph 4, Grantee shall not be deemed to be in violation of this paragraph 5. Grantor shall not cause any nuisance or dangerous condition in its use of the Grantor's Property; nor shall Grantor unreasonably interfere with or unreasonably obstruction, disturb or endanger the safe and peaceful intended right-of-way use of the Tunnel. Each party acknowledges that among other damages, for which a party may be liable due to a breach of its obligations under this Agreement, is the increase in the cost of the other party's property and liability insurance resulting from any such breach.

6. **Legal Compliance.** Subject to properly contested requirements as described below, each party to this Agreement must comply with all laws, ordinances, rules and regulations ("**Legal Requirements**") applicable to their use of the Grantor's Property including, but not limited to, those relating to protection of the environment, zoning, building, fire, health and safety of any government or any agency, body or subdivision thereof and bearing on the construction, operation, ownership or use of the Grantor's Property and any or all improvements of the Grantor's Property. Compliance with any Legal Requirement that requires alteration, improvement, maintenance, repair or modification of property must be accomplished by and at the sole expense of the party, as the case may be, who has the obligation hereunder to maintain and repair the property affected by any such Legal Requirement. Each party must give prompt notice to the other party of any written notice received of the violation of any Legal Requirement affecting the party's property that is the subject of this Agreement. Notwithstanding the foregoing provisions, either party may, at such party's expense, defer compliance with and contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Legal Requirement affecting any portion of the Grantor's Property that such

abandonment of the Tunnel Easement other than a written statement of the County's intent to abandon the Tunnel Easement. This Easement may be abandoned by Grantee without removing the Tunnel from the Grantor's Property. However, Grantee shall, at its expense, seal, fill or otherwise secure the Tunnel in a manner proposed by Grantee and reasonably acceptable to Grantor. Grantor may reasonably withhold its consent to any proposal which poses a threat of future disturbance or damage to any improvements to Grantor's property.

12. **Benefits and Burdens.** This Tunnel Easement is appurtenant to and shall run with both the County Justice Property and the County Court House Property and shall inure to the benefit of Grantee, its successors and assigns and shall be binding upon the Grantor's Property as the servient estate.

13. **Remedies and Attorneys' Fees.** In the event of any breach of the provisions of this Tunnel Easement Agreement, the aggrieved party shall be entitled to exercise any remedy provided by law or equity, including the remedies of injunction and/or specific performance. In the event litigation is commenced to enforce the provisions of this Tunnel Easement Agreement, the prevailing party shall recover from the other party, in addition to all other costs and damages, reasonable attorneys' fees at trial, in arbitration or upon any appeal or petition for review thereof.

14. **Default and Remedies.** In the event a party determines that the other party is violating any requirements of this Agreement then the party must be given written notice to the other party of its alleged violation and an opportunity to correct its violation within thirty (30) days of the notice except in the event of an emergency. In such case the other party may either commence to correct the violation within such time period, in which event the complaining party may take no further action against the violator, or submit the issue of whether a violation exists to litigation, in which event the complaining party may take no action until the litigation is resolved. In the event of an emergency either party may take such actions as they in good faith determine necessary in the circumstances to protect their respective interests including if necessary reasonable self help action or an ex parte petition for provisional process from a court of competent jurisdiction. In the event of any violation of the provisions of this Agreement, the aggrieved party shall be entitled to exercise any remedy provided by law or equity other than termination of this Agreement, including the remedies of injunction and/or specific performance.

15. **Miscellaneous.** The invalidity of any part of this Agreement will not impair or affect in any manner the validity, enforceability or effect of the balance of this Agreement. As used herein, the singular includes the plural, and the plural the singular. The masculine and neuter each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and in no way limit any provisions of this Agreement. No restriction, condition, obligation, or provision contained in this Agreement may be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof that may occur. Nothing herein shall be construed as a waiver of the Grantee's future exercise of its power of eminent domain with respect to the Grantor's Property. Grantee hereby acknowledges that it does not intend to exercise its power of eminent domain with respect to the Grantor's Property so long as the Tunnel Easement provided for herein can reasonably be used by Grantee for the Grantee's purposes described in this Agreement. In the event the performance of any obligation under this

STATE OF OREGON

COUNTY OF

)
} ss.
)

This instrument was acknowledged before me on the _____ day of _____, 2007, by _____ as _____ of Two Main Development LLC, a Delaware limited liability company, on its behalf.

Notary Public
My commission expires:
Commission No.:

STATE OF OREGON

COUNTY OF

)
} ss.
)

This instrument was acknowledged before me on the _____ day of _____, 2007, by Ted Wheeler as Chair, Board of County Commissioners of Multnomah County, Oregon, a political subdivision of the State of Oregon, on its behalf.

Notary Public
My commission expires:
Commission No.:

County Justice Property

All of Block 25, PORTLAND ADDITION TO THE CITY OF
PORTLAND, in the City of Portland, County of Multnomah and State
of Oregon

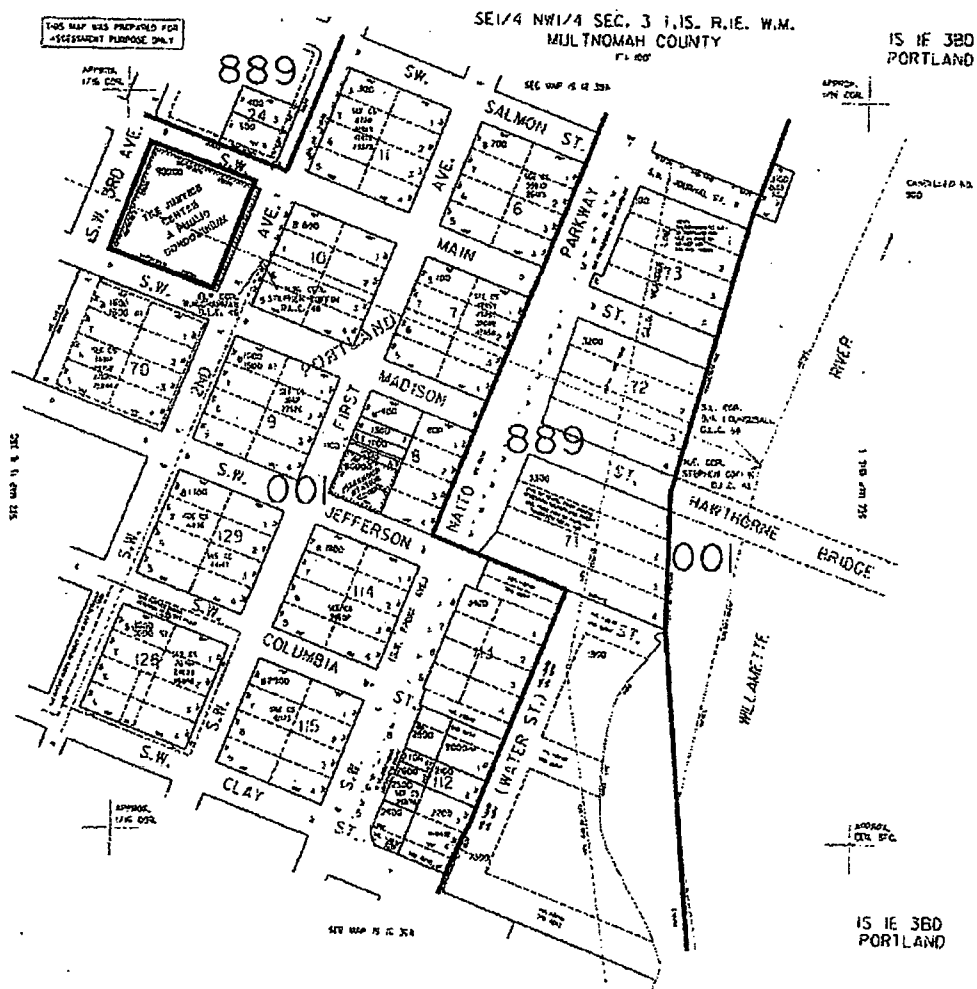
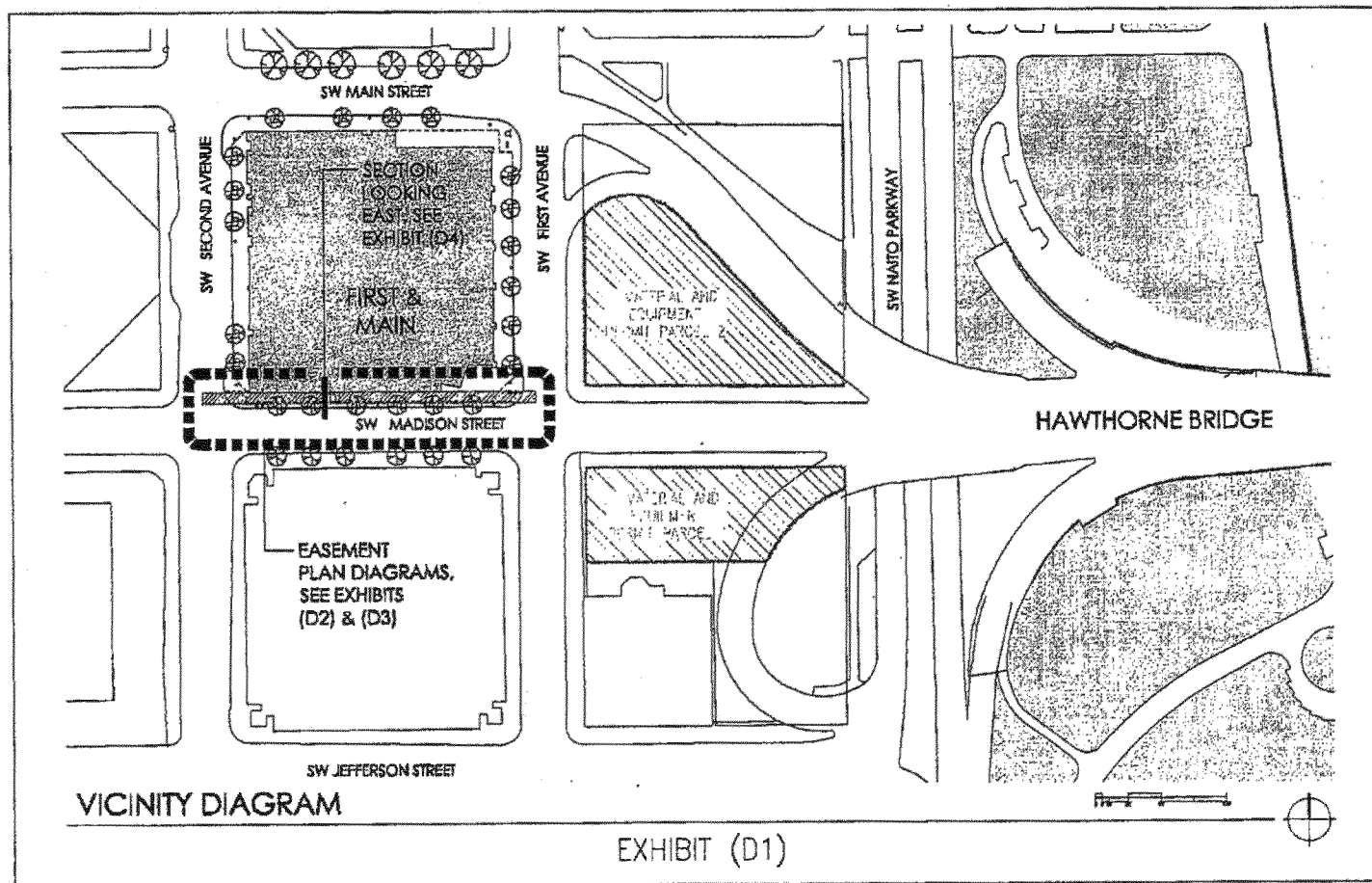


EXHIBIT D-1

Vicinity Diagram



Basement Plan

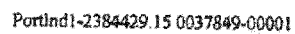


EXHIBIT D-5
Legal Description

Tunnel Easement

(This is a preliminary description. Upon completion of a final description by Grantor, the parties shall initial such final description and Grantor shall replace this description with the final description.)

EXHIBIT F

Illustration of Initial Accommodations

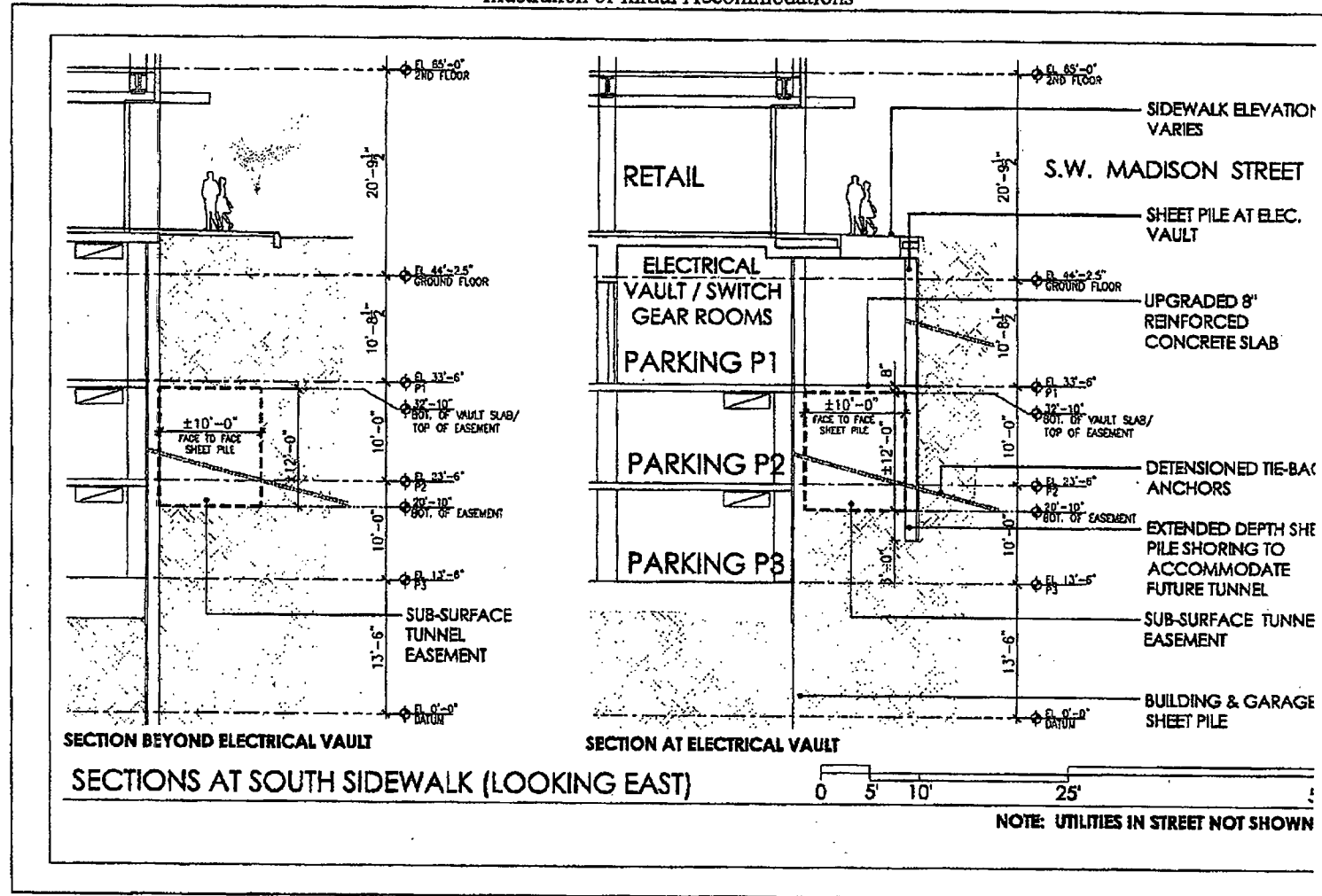


EXHIBIT G

PERMIT (MC PERMIT # _____)

This is an agreement between Multnomah County ("County"), by and by Two Main Development LLC ("Two Main") and Hoffman Construction Company ("Contractor") collectively ("Permittees") effective as of December 11, 2007 ("Effective Date").

Recitals

A. Two Main has contracted with Contractor to build a building on Two Main's property located at 100 SW Main in the City limits of Portland, Oregon.

B. Permittees desire to use the north 75' of Block 8, Portland (Parcel 1) and that portion of Block 7, Portland lying south and east of the bridge ramp located thereon (Parcel 2) except the bridge ramp improvements and slopes located on each parcel ("Permit Property") for the purpose of staging for construction and for storage of construction material and equipment and parking of construction vehicles required to construct the. The approximate location of the Permit Property is shown on Exhibit A.

THE PARTIES AGREE AS FOLLOWS:

1. Recitals are Contractual. The above listed Recitals are contractual and are incorporated by this reference.

2. Grant of Revocable Permit. Permittees are granted authority to use the Permit Property on the terms and conditions set forth herein. Permittees accept the property AS IS. County shall not be liable for any defects in the property, known or unknown.

3. Term. The term of this Permit is as follows:

Parcel 1: From the Effective Date through February 31, 2010

Parcel 2: From the Effective Date through August 31, 2008 and thereafter month to month.

During the term, County may, on 5 work day's notice (or in the event of an emergency, on 24 hour's notice) require Permittees to vacate such portions of the Permit Property as may be necessary for the County to perform maintenance, repair, demolition or other work on County's bridge ramp improvements located on and adjacent to the Permit Property.

4. Scope of the Permit. Permittees shall use the Permit Property for the purpose of staging for construction and for storage of construction material and equipment; staging of demolition receptacles; and parking of Permittees' vehicles and for no other purpose. Use of the Permit Property by Permittees shall be subject to the following terms and conditions:

a. County personnel shall have access to the Permit Property on reasonable notice to Permittees.

b. No vehicles in excess of 40,000 pounds, gross vehicle weight, will be allowed on the Permit property without prior written approval of the County.

c. Permittees shall be solely responsible for costs associated with use of the Permit Property.

d. Permittees shall comply with all applicable federal, state and local laws and regulations.

e. Permittees shall obtain all necessary permits or approvals as may be necessary for the use of the Permit Property. Permittees agrees to indemnify the Commission as provided above for any damages caused by the violation thereof of any permits or approvals that may otherwise be required.

f. Permittees shall not allow any lien of any kind, type or description to be placed or imposed upon the Permit Property.

g. Permittees shall be responsible, at Permittees' cost, for providing screening between Parcel 1 and the adjacent Veritable Quandary restaurant acceptable to the owner of the Veritable Quandary during the term of the Permit as it relates to Parcel 1.

5. Maintenance; Restoration of County's Property on Termination. Permittees shall be solely responsible, at their cost, for the maintenance and repair of the Permit Property as may be reasonably necessary to maintain the same in a safe and suitable condition for the purposes set forth herein. At the expiration of this Permit, all improvements and alterations to the Permit Property constructed by Permittees shall be removed at Permittees' sole expense and the Permittees shall restore the Permit Property to the condition it was in prior to the Effective Date.

6. Damage to County's Property. Any damage to County's property resulting from the use of the Permit Property shall be immediately reported to County in writing and repaired by Permittees at Permittees' sole expense and County's sole satisfaction.

7. Indemnity and Insurance. Permittees agree to indemnify, defend and hold County harmless from and against all liability, damage loss, and costs of any nature whatsoever, including attorney fees, arising from or relating to the use of the Permit Property by Permittees and Permittees' agents, employees, independent contractors, licensees and invitees and any other person whether or not such use is permissive. Permittees shall provide at their own expense and keep in force during the Term of the Permit, naming County insured, a commercial general liability insurance policy or such successor comparable form of coverage (hereinafter referred to as a "Liability Policy") written on a "per occurrence basis," including, without limitation, blanket contractual liability coverage, broad form property damage, independent contractor's coverage, and personal injury coverage, protecting County and Permittees against liability occasioned by any covered occurrence on or about the Permit Property. Such policy shall be written by an insurance company acceptable to County in County's sole discretion and licensed to do business in the State of Oregon and shall provide coverage limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily or personal injury (including death) and property damage combined, subject to a commercially reasonable deductible. Prior to the time such insurance is first required to be carried by Permittees and thereafter, Permittees agree to deliver to County a certificate evidencing such insurance coverage. Said certificate shall contain an endorsement that such insurance may not be canceled except upon ten (10) days' prior written notice to County. Any damage to County's Property or the Permit Property resulting from the use of the License Property shall be promptly reported to County and repaired by Permittees at Permittees' sole expense.

8. Hazardous Materials.

a. No hazardous materials shall be stored or used on the Permit Property except those typically stored or used in the operation of the activities allowed under this Permit, provided however that such storage or use shall comply with all applicable federal, state and local laws thereto. materials shall be except in compliance with all federal, state and local laws applicable thereto. Upon the expiration or termination of this Permit,

Permittees shall remove immediately all such materials from the Permitted Property. As used herein, the term "**hazardous materials**" means any hazardous or toxic substance, material or waste which is now or hereafter the subject of Governmental Regulations, including without limitation any material or substance which is (A) defined as a "hazardous waste," under Oregon Revised Statutes ("**ORS**") 465.003 and ORS 466.005, (B) defined as a "toxic substance" under ORS 465.003, (C) defined as a "hazardous substance," under ORS 465.200, (D) defined as a "PCB" under ORS 466.505, (E) defined as a "hazardous material" under ORS 465.605, (F) designated as a "hazardous substance," "hazardous waste" or "hazardous material" by the Environmental Quality Commission, (G) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act 33 U.S.C. § 1251 et. seq., (33 U.S.C. § 1321) or as listed pursuant to § 307 of the Federal Water Pollution Control Act (33 U.S.C. § 1317), (H) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 9601), (I) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq., or (J) identified as a "chemical of interest" by the Federal Department of Homeland Security.

9. Taxes Permittees shall be responsible for all ad valorem taxes assessed against the Permit Property during the term of this Permit. If Permittees are in possession and control of the Parcel 1 or Parcel 2 pursuant to this Permit on July 1 of any year during which this Permit is in effect such parcel shall be taxable for ad valorem tax purposes for tax year beginning January 1 of such year and Permittees shall be pay the full year of taxes regardless of whether Permittees are in possession and control of the such parcel for the full tax year.

10. Miscellaneous. All exhibits referenced in this Permit are incorporated herein. Any amendment or alteration to this Permit shall only be in writing and shall be signed by each party to the Permit. This Permit shall be governed by and construed in accordance with the laws of the State of Oregon. In the event of litigation, exclusive venue shall lie in Multnomah County, Oregon. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11. No Recordation. This Permit shall not be recorded.

12. Notice. Notices under this Permit shall be deemed to be properly served if delivered in writing via facsimile or by certified mail with return receipt requested to the following addresses or such other places as the parties reasonably designate:

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Land Use and Transportation Program
Right-of-Way Permit Section – Alan Young
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Portland, Oregon 97233-5910
503.988.3389 Facsimile

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c/o Shorenstein Realty Services, LP
555 California Street, 49th Floor
San Francisco, CA 94104
Attn: Corporate Secretary

415-772-7148 Facsimile

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Name/Title _____

Date: _____

Permittee, HOFFMAN CONSTRUCTION

Name/Title _____

Date: _____

County, MULTNOMAH COUNTY

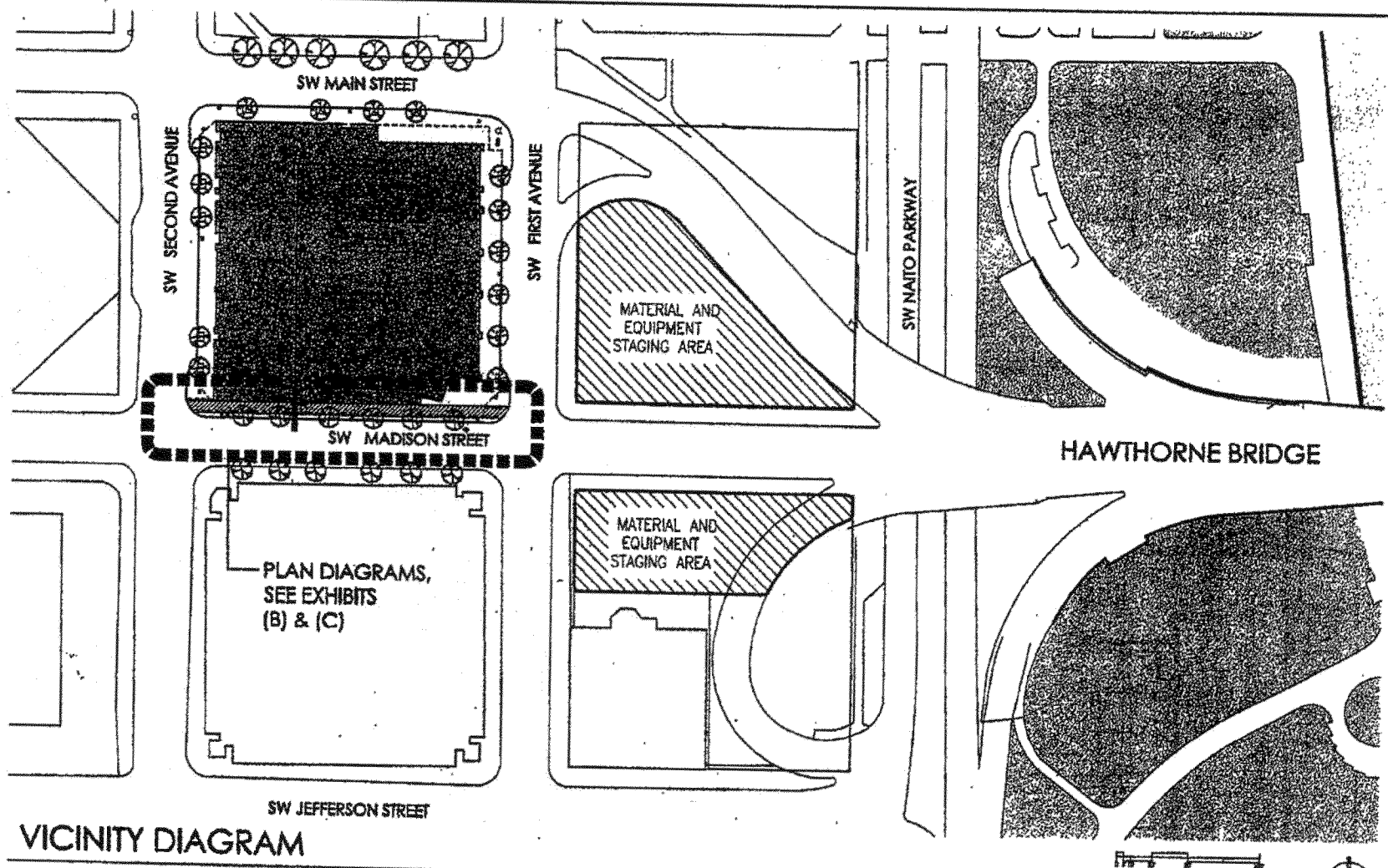
Ted Wheeler, Chair

Date: _____

Reviewed

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY

By: _____
John S. Thomas



ORIGINAL

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To PERMITTEES: Two Main Development LLC
c/o Shorenstein Realty Services, LP
555 California Street, 49th Floor
San Francisco, CA 94104
Attn: Corporate Secretary

415-772-7148 Facsimile

With a copy to:

Todd Sklar
c/o Shorenstein Realty Service, LP
555 California Street, 49th Floor
San Francisco, CA 94104

and:

Hoffman Construction Company
805 SW Broadway
Portland, OR

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Name/Title _____

Date: _____

Permittee, HOFFMAN CONSTRUCTION

Name/Title _____

Date: _____

County, MULTNOMAH COUNTY

Ted Wheeler
Ted Wheeler, Chair

Date: _____

Reviewed

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY

By:

John S. Thomas
John S. Thomas

415-772-7148 Facsimile

With a copy to: Todd Sklar
c/o Shorenstein Realty Service, LP
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Name/Title

Date:

Permittee, HOFFMAN CONSTRUCTION

Name/Title

Date:

Stephanie Coyle / Proj. Mgr.

12/21/07

County, MULTNOMAH COUNTY

Ted Wheeler, Chair

Date:

Reviewed

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY

By:

John S. Thomas

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With a copy to:

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Permittee, TWO MAIN DEVELOPMENT LLC

Name/Title

Todd Sklar
Vice President

Date:

20 Dec 07

Permittee, HOFFMAN CONSTRUCTION

Name/Title

Date:

County, MULTNOMAH COUNTY

Ted Wheeler, Chair

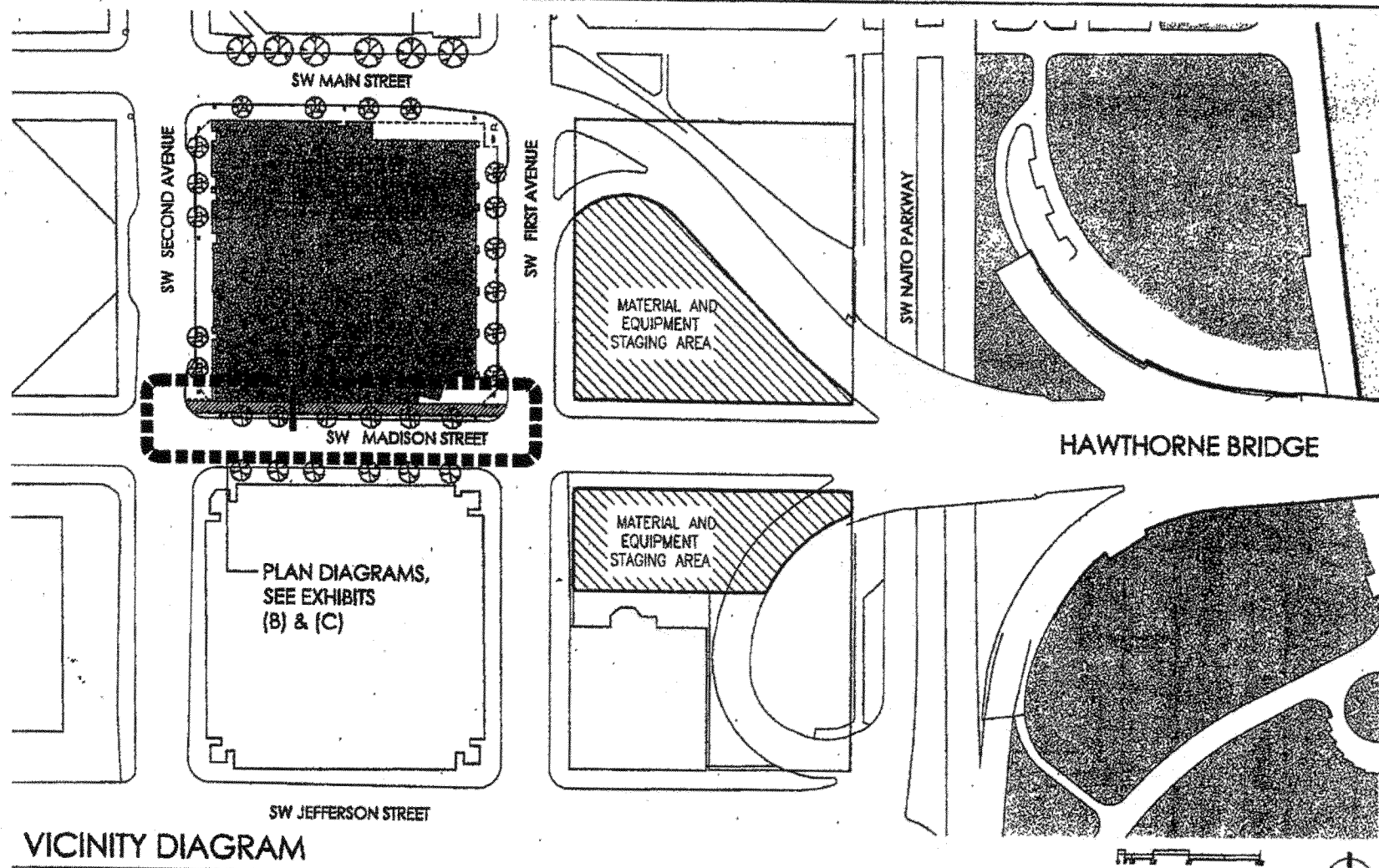
Date:

Reviewed

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY

By:

John S. Thomas





MULTNOMAH COUNTY

AGENDA PLACEMENT REQUEST (short form)

Board Clerk Use Only

Meeting Date: 12/06/07
Agenda Item #: R-10
Est. Start Time: 10:40 AM
Date Submitted: 11/16/07

Agenda Title: First Reading of an ORDINANCE Amending MCC Sections 9.160 and 9.170
Relating to County Compensation Plan

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

Requested Meeting Date: December 6, 2007 Amount of Time Needed: 5 minutes
Department: Department of County Management Division: Human Resources
Contact(s): Travis Graves
Phone: 503.988.6134 Ext. 86134 I/O Address: 503/400 HR
Presenter(s): Travis Graves

General Information

1. What action are you requesting from the Board?

Adopt Ordinance Amending MCC Sections 9.160 and 9.170 Relating to County Compensation Plan;
This action would return the Code to the original language giving executive authority for
compensation matters to the Chief Executive with reporting mechanisms.

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.

See attached July 17, 2007 Memo from Travis Graves;

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

n/a

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

See attached July 17, 2007 Memo from Travis Graves;

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

Required Signature

Elected Official or
Department/
Agency Director:

Carol M. Ford

Date: 11/21/07



Department of County Management
MULTNOMAH COUNTY OREGON
Human Resources

Multnomah Building
501 SE Hawthorne Blvd., Suite 400
Portland, Oregon 97214
(503) 988-5015 Phone
(503) 988-3009 Fax

MEMORANDUM

TO: Maria Rojo de Steffey, Commissioner District 1
Jeff Cogan, Commissioner District 2
Lisa Naito, Commissioner District 3
Lonnie Roberts, Commissioner District 4

CC: Ted Wheeler, Chair
Bill Farver, Chief Operating Officer
Barbara Willer, Deputy Chief Operating Officer
Carol Ford, DCM Department Director

FROM: Travis Graves
Multnomah County HR Director

DATE: July 17, 2007

RE: Classification / Compensation Recommendations

Introduction

Prior to 2003 the Chair had sole responsibility as the Chief Executive Officer and Chief Personnel Officer to adopt executive rules to implement personnel policies as required under the County Charter and Code. In December of 2003 Ordinance 1022 amended the Chair's authority for matters relating to compensation in two ways. First it established that the Chair must seek Board approval for the non-represented compensation plan on an annual basis and secondly it placed limits on the Chair's authority to adopt executive rules for compensation related matters.

Further, Resolution 04-074, adopted June 3, 2004, set guidelines for Board approval of compensation plan changes. This included requiring Board resolution to direct changes which then must be implemented by the Chair through Personnel Rules (executive rules).

In addition, a FY '05 Budget Note required the County to implement a policy of submitting all individual changes to classifications plus any budget modifications

associated with the changes to the Board for consideration through the resolution process. This also included requesting Board approval for changes to the non-represented compensation plan prior to implementation. This budget note expired at the end of FY '05 however it has been followed in practice ever since. In March of this year Commissioner Rojo de Steffey recommended, and it was affirmed by the Board, that approval for classification changes be moved to the consent calendar.

Discussion

The Ordinance adopted in 2003 added the following underlined wording to the County Code and thus limited the Chair's authority accordingly:

The compensation plan includes the following benefits defined by Board resolution and implemented by Chair executive rule:

- (1) Paid holidays;
- (2) Paid leaves;
- (3) Leaves of absence without pay;
- (4) Leave-sharing programs;
- (5) Health and welfare benefits;
- (6) Educational assistance programs;
- (7) Deferred compensation programs;
- (8) Flexible spending accounts;
- (9) Pension programs;
- (10) Workers' compensation and supplemental benefits;
- (11) Other benefits to implement subsection (B); and (12) Other benefits approved by the Board.

The resolution adopted in 2004 further breaks out the individual personnel changes which require Board approval (see attached). It should be noted that neither the 2003 Ordinance nor the Resolution in 2004 make any changes to or curtails the Chair's authority to make adjustments to non-represented salary ranges or his ability to establish new classes. The County Code as amended requires the Chair to bring changes to the compensation plan before to the Board for review and

approval prior to the adoption of the annual County Budget. It was the Budget Note in FY '05, which has since expired, that caused the County to implement a policy of requesting Board approval for all classification plan changes.

However, all changes which directly impact current fiscal year budgets or impact future year's budgets still require Board approval. For example, a recent study conducted by the Classification Compensation Unit which changed the compensation range for the non-represented Surveyor position did not require Board approval as it did not impact the budget.

In addition, the ordinance and resolution requires Board action to implement Personnel Rules that in the past were solely adopted and implemented under the Chair's authority as the Chief Executive Officer and Chief Personnel Officer per the County Charter and Code.

As the Board is aware, bringing the issues listed above in front of the Board has created a significant workload for many across the County and has also taken up valuable Board time. Moving the classification changes to the Consent Calendar for approval is a good beginning, but even with this change the workload for many in the County remains high.

One issue that has been raised in my discussions with Board staff was a concern over the future management of the County's classification and compensation system. Since becoming HR Director in 2005, I redeployed resources into our Classification and Compensation Unit increasing the FTE and hired a permanent full-time Classification and Compensation Manager. In the past year we have experienced a one hundred percent turnover in this unit. The new staff and manager are seasoned professionals with the expertise and experience to provide a better level of oversight over the County's system. In addition, the new Chair and his staff have taken an active interest in the County's human resources functions including a pronounced increase in their desire to manage classification and compensation issues.

It is also my understanding that the Board would like to maintain its awareness of the classification and compensation changes that are occurring throughout the County. I have attached a few reports as samples which HR can provide to all commissioners on a monthly or quarterly basis which will detail pending and completed classification and compensation changes. In addition, I would propose that all future Personnel Rules pertaining to compensation be sent to the Board for review prior to their adoption by the Chair.

Recommendation

At the request of the Chair, repeal Ordinance 1022 and Resolution 04-074 to return executive authority for compensation matters to the Chief Executive with the reporting mechanisms detailed above and maintain the requirement for yearly Board approval of the compensation plan before the adoption of the annual County Budget.

Attachments

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 04-074

Establishing Approval Process for Management Service Benefits and Compensation Plan Changes

The Multnomah County Board of Commissioners Finds:

- a. On December 11, 2003, the Board adopted Ordinance No. 1022 requiring Board approval of the compensation plan by resolution prior to adoption of the annual County budget.
- b. A staff committee was asked to review the approval process and make recommendations for establishing an efficient approval process.
- c. The committee has completed its review and makes the following recommendations as more fully described in the attached Table:
 - delegating approval authority for certain changes, such as those mandated by federal or state laws or regulations, and those with minimal fiscal impact to the Chair, such as:
 - o the basis for or use of paid leaves;
 - o administrative changes to leave-sharing, health plan drug coverage, educational assistance, deferred comp, bus pass and flexible spending programs; or
 - o mandated changes to health and welfare plans; pension programs, and workers' compensation;
 - setting guidelines for Board approval of other compensation plan changes

The Multnomah County Board of Commissioners Resolves:

1. The Board establishes the approval process contained in the attached Table dated March 4, 2004.

ADOPTED this 3rd day of June, 2004.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Diane M. Linn, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
Agnes Sowle, County Attorney

Page 1 of 5 - Resolution Establishing Compensation Plan Change Approval Process

March 4, 2004

RECOMMENDED APPROVAL FOR MANAGEMENT SERVICE BENEFITS AND COMPENSATION CHANGES

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Type of Benefit	Current Approval Process - Non-Represented	Recommended Approval Process - Delegated Authority	Recommended Approval Process - Consent Calendar	Recommended Approval Process - Board Resolution
Paid holidays	Personnel Rules	Changes with no fiscal impact, such as use of holidays, saved holidays, etc. approved by Chair		Current MCPR 4-30-030 lists paid holidays for non-represented employees, and also requires BCC approval for any additional holidays.
Paid leaves - Vacation Leave	Personnel Rules	Changes with no fiscal impact, such as use of leave, sequencing of leave, etc. approved by Chair		Changes affecting accrual amounts or limits, or payoff amounts would require Board Resolution to direct changes. Chair would approve personnel rules to implement Board Resolution (County Attorney reviews Personnel Rules for consistency with Board Resolutions prior to approval by the Chair).
Paid Leaves - Sick Leave	Personnel Rules	Changes with no fiscal impact, such as use of leave, sequencing of leave, etc. approved by Chair		Changes affecting accrual amounts or limits, or adding any payment provisions would require Board Resolution to direct changes. Chair would approve personnel rules to implement Board Resolution.
Paid Leaves - Recognition Leave	Personnel Rules	Changes affecting basis for leave, eligibility, approval authority - approved by Chair		Changes affecting amounts of leave would require Board Resolution to direct changes. Chair would approve personnel rules to implement Board Resolution.
Paid Leaves - Other (Judicial, Military, Bereavement, Leave for Exams, Training Leave)	Personnel Rules	Changes affecting basis for leave, eligibility, approval authority - approved by Chair		Changes affecting amounts of leave would require Board Resolution to direct changes. Chair would approve personnel rules to implement Board Resolution.
Leaves of absence without pay	Personnel Rules	No fiscal impact - approved by Chair		

March 4, 2004

Type of Benefit	Current Approval Process - Non-Represented	Recommended Approval Process - Delegated Authority	Recommended Approval Process - Consent Calendar	Recommended Approval Process - Board Resolution
Leave-sharing programs - Catastrophic Leave	Personnel Rules	Administrative changes in operation of the program that do not affect eligibility for benefits or level of benefits approved by Chair		Changes affecting level of benefits or adding new programs would require Board Resolution to direct changes. Chair would approve personnel rules to implement Board Resolution.
Leave-sharing programs - Military Leave Donation	Personnel Rules	Administrative changes in operation of the program that do not affect eligibility for benefits or level of benefits approved by Chair		Changes affecting level of benefits or adding new programs would require Board Resolution to direct changes. Chair would approve personnel rules to implement Board Resolution.
Health and welfare benefits - changes in plan design, such as options, plan offerings, copays, employee premium sharing	Employee Benefits Board recommendation to BCC in March of each year			<u>NO CHANGE</u> Board approval already required; process in place.
Health and welfare benefits - Mandated changes in plan coverage for drugs	Plan Documents	FDA approval of new prescription drugs requires coverage by plan if the drug is used to treat a covered condition. Removal from coverage of a prescription drug that has been approved by the FDA for OTC is automatic under Kaiser plan, and fiscally prudent under ODS. Approved by Central HR/LR Director		

March 4, 2004

Type of Benefit	Current Approval Process - Non-Represented	Recommended Approval Process - Delegated Authority	Recommended Approval Process - Consent Calendar	Recommended Approval Process - Board Resolution
Health and welfare benefits - Changes in plan coverage, provider types and/or medical procedures	Plan Documents	Typically mandated by state or federal agencies - examples include mental health coverage requirements, additional treatment options or services, or alternative providers. Approved by Central HR/LR Director		
Educational assistance programs	Personnel Rules	Administrative changes in operation of the program that do not affect eligibility for benefits or level of benefits. Approved by Chair		Changes affecting level of benefits or adding new programs would require Board Resolution to direct changes. Chair would approve personnel rules to implement Board Resolution.
Deferred compensation programs	Plan documents	No fiscal impact to the County - employee funded, County costs are administrative only - mandated and administrative changes approved by Chief Financial Officer.		NO CHANGE TO CURRENT PROCESS Changes that materially impact the deferred compensation plan require Board approval.
Bus Pass Program	Personnel Rules	Changes in administration of the program		Changes in benefit level - e.g., reduction in County contribution (currently 100%).
Flexible spending accounts	Plan documents	No fiscal impact to the County - employee funded, County costs are administrative only. Administrative changes approved by Central HR/LR Director		
Pension programs	Personnel Rules	Mandated Changes - approved by Central HR/LR Director or Chief Financial Officer, as appropriate		NO CHANGE TO CURRENT PROCESS Changes affecting participation in PERS, other retiree benefits, County contributions, establishment of separate accounts, etc. (already subject to Board approval)

March 4, 2004

Type of Benefit	Current Approval Process - Non-Represented	Recommended Approval Process - Delegated Authority	Recommended Approval Process - Consent Calendar	Recommended Approval Process - Board Resolution
Workers' compensation and supplemental benefits	State law and Personnel Rules	Basic requirements are mandated – administrative changes approved by Central HR/LR Director		
Compensation – Special Pay Provisions	Personnel Rules	Changes affecting basis for payment, eligibility, approval authority - approved by Chair		Changes affecting amounts of payment in existing rules or adding additional special pay provisions or incentives would require Board Resolution to direct changes. Chair would approve personnel rules to implement Board Resolution.
Class/Comp Plan Changes – Abolishing Classes	Personnel Rules	No fiscal impact- changes approved by Central HR/LR Director		
Class/Comp Plan Changes – Changing salary ranges or establishing new classes.	Personnel Rules			Changes which directly impact current fiscal year budgets (already required by current personnel rules) and changes which increase budgets for later fiscal years require Board approval.

ACCEPTED LOCAL 88 STUDIES FOR 2007-2008			
Final Priority 5-1-07	JCN	JCN Title	Total EE's (4-4-07)
1	6266	Corrections Tech	55
		GROUP TOTAL	55
2	6333	Laboratory Technician	7
	6335	Laboratory Specialist	6
	6286	Pathologist Assistant	2
	6282	Deputy Medical Examiner	6
		GROUP TOTAL	21
3	6268	Corrections Counselor	45
	6272	Juvenile Counselor	52
	6254	Corrections Hearings Officer	2
		GROUP TOTAL	99
4	6062	Animal Care Aide	4
	6065	Animal Care Technician	7
	6069	Animal Control Aide	3
	6067	Animal Control Officer	11
	6066	Animal Health Technician	3
		GROUP TOTAL	28
5	6027	Finance Technician	17
	6029	Finance Specialist 1	30
	6030	Finance Specialist 2	29
	6032	Finance Specialist Sr	11
		GROUP TOTAL	87
6	6365	Mental Health Consultants	110
	6295	Social Worker	18
		GROUP TOTAL	128
7	6403	Desktop Support Specialist	10
	6404	Desktop Support Specialist SR	13
	6401	Systems Operator	6
	6402	Systems Operator SR	3
		GROUP TOTAL	32
		GROUP TOTAL	450
		Other Management Studies in process:	
		Health Mgmt. Professionals	
		Operations Supervisors/Administrators	
		Command Staff -- MCSO	

Projected Start and End Date for Studies 2006-07

Project	Team Lead	Other Resources	Sponsor	Begin Date	Comments	End Date	Pay effective	Comments
Auditors	Joi	Tami Boedigheimer	Suzanne Flynn, Lavonne Griffin- Valade	July, 2006	3 positions. Study was completed in Sept. 2006	TBD	changes are effective on the date the study is approved	The new 2007 Auditor is revising the job classes and has requested the study be revised. (Updated Oct. 1, 2006)
County Attorney	Ruth	Tami Boedigheimer	Agnes Sowles	30-Aug-06	14 positions	Dec. 2006	changes are effective on the date the study is approved	
Buyer	Ruth	Ross Ardrey, Joi	Mindy Harris	20-Sep-06	17 positions	Dec. 2006	changes are effective on the date the study is approved	
Counselor Study	Travis/Joi	TBD	Local 88	FY 2005-06	Study was completed by Sikorrah & Associates and was rejected by the Class Comp Committee	TBD	1-Jul-06	Class Comp & Advisory committee meeting on Nov. 20 will review comparables used by Sikorrah to determine if job content is a reasonable 65-75% match with Multco job classes.
Study #1 Business/Data Analyst	Candy		Local 88	Oct. 2006	21 positions	Mar. 2007	1-Jul-06	
Study #2 Legal Asst/LA Sr/OA Sr	Candy		Local 88	Nov. 2006	61 positions	Apr. 2007	1-Jul-06	
Study #3 Trades Positions	Ruth		Local 88	Jan. 2007	28 positions	Mar. 2007	1-Jul-06	
Study #4 Public Relations Positions	Candy		Local 88	Jan. 2007	15 positions	Apr. 2007	1-Jul-06	
Study #5 Housing/Community positions	Ruth		Local 88	Feb. 2007	22 positions	May. 2007	1-Jul-06	
Study #6 OA2's (DCJ/ASD)	Candy	Consultant if needed	Local 88	Mar. 2007	76 positions	Aug. 2007	1-Jul-06	

Req #	Position Number	Dept	Unit	Employee	Supervisor	Union	Old Class	New Classification	Submitted By	Recd	Due	C/C Staff	Comments
766	New	DCHS	Develop Disab/Region 1 Crisis	Vacant	Markins, Karen	88	new	OA Sr/6002	Mgmt	7/13/2007	9/13/2007	Doi, J	Needs org chart and Joi's signature on paperwork. KS
765	7 New	Health	Medicaid	Vacant	Sugarman, Marcy	88	New	Eligibility Specialist/6300	Mgmt	7/13/2007	9/13/2007	Busby, C	One entry for 7 new identical positions. KS
764	New	Health	ICS Administration	Vacant	Kirchoff, Susan	Non	New	Project Manager/9063	Mgmt	7/13/2007	9/13/2007	Busby, C	
763	New	Health	HIV/HVC Prevention Unit	Vacant	Tillman, Laticia	88	New	PDS/6021	Mgmt	7/13/2007	9/13/2007	Busby, C	
762	713121	Library	Interlibrary Loan	Vacant	Bertelson, Candy	88	new	Library Assistant/7211	Mgmt	7/13/2007	9/13/2007	Busby, C	
761	705754	Health	ICS Mid County Health Center	Vacant	Cockrell, Deborah	88	OA2/6001	Health Assistant 2/6294	Mgmt	7/13/2007	9/13/2007	Busby, C	
760	703084	Health	Business Svcs	Stone, Jennifer	Newton, Debra	88	Fin Spec 1/6029	Fin Spec 2/6030	Mgmt	7/13/2007	9/13/2007	Busby, C	
759	705128	Health	Dental Admin	Olbrich, Pam	Kirchoff, Susan	Non	Program Supv/9361	Program Mgr/9615	Mgmt	7/13/2007	9/13/2007	Busby, C	
758	711811	Health	Integrated Clinical Services	Vacant	Loos, Mary	Non	Proj Mgr/9063	Prog Mgr/9615	Mgmt	7/13/2007	9/13/2007	Busby, C	
757	New	Health	ICS Admin-CareOre Grant	Vacant	Loos, Mary	Non	New	Program Supervisor/9361	Mgmt	7/13/2007	9/13/2007	Busby, C	
756	708731	Health	HIV/HCV Community Programs	Guemsey, Jessica	Nichols, Loreen	88 to Non	Pro Sup/9361 (temp) was Hlth Ed/8352	Prog Supv/9361	Mgmt	7/13/2007	9/13/2007	Busby, C	
755	706609	Health	ICS Administration	Marquardt, Jon (Interim)	Loos, Mary	88 to Non	Admin Analyst/6033	Op Sup/9025	Mgmt	7/13/2007	9/13/2007	Busby, C	
754	New	DCJ	ASD/PSP	Vacant	Eville, Lori	88		Corr Tech/6033	Mgmt	7/10/2007	9/10/2007	Nutting, R	

7/16/2007

753	New	DCJ	ASD/PSP	Vacant	Evile, Lori	88		Office Asst 2/6001	Mgmt	7/10/2007	9/10/2007	Nutting, R	
752	703991	DCS	LUT	Vacant	Hovden, Robert	88	6231/Eng Tech 1	Eng Tech 3/6232	Mgmt	7/10/2007	9/10/2007	Busby, C	
751	708312	DCM	FPM/Capital Program	Vacant	Lindenthal, John	88	6016/Fac Spec 3	Fac Spec 2/6017	Mgmt	7/10/2007	9/10/2007	Nutting, R	
750	New	DCS	Land Use/ Transportation	Vacant	Schilling, Karen	88		PDS/6021	Mgmt	7/9/2007	9/9/2007	Busby, C	
749	713124	DCHS	Business Svcs	New	Tinkle, Kathy	Non Rep	n/a	Finance Supv/9335	Mgmt	7/5/2007	9/5/2007	Tennant, J	See below - Approved request with 7/9/07 effective date. 7/9/07 JT Re-opened request; need more clarificaton from Kathy. 7/10/07 JT
748	713123	DCHS	Business Svcs	New	Tinkle, Kathy	Non Rep	n/a	Finance Supv/9335	Mgmt	7/5/2007	9/5/2007	Tennant, J	See below - Approved request with 7/9/07 effective date. 7/9/07 JT Re-opened request; need more clarification from Kathy. 7/10/07 JT
747	703869	DCJ	ECCS/HR	Vacant	Opoka, James	88 to Non	6021/PDS	HR Tech/9061	Mgmt	7/5/2007	9/5/2007	Nutting, R	
746	701260	DCS	Road Mnt, Surv & Eng	People, Kim	Johnson, Cecelia	Non-Rep	9360/Prg Mgr 2	Prg Mgr Sr/9362	Mgmt	6/29/2007	8/29/2007	Busby, C	Call to Dept HRM - reclass or re- org ee promoted 12/1/06 - CJB 7/3/07
745	701829	DCM	A&T	Grier, Rene	Walruff, Randy	88	6079/A&T Analyst Sr	6456/Data Analyst Sr	Mgmt	6/27/2007	8/27/2007	Nutting, R	
744	701190	DCM	A&T	Sellars, James	Tilgner, June	88	6079/A&T Analyst Sr	6456/Data Analyst Sr	Mgmt	6/27/2007	8/27/2007	Nutting, R	
743	707630	DCM	A&T	Howard, Dan	Tilgner, June	88	6079/A&T Analyst Sr	6456/Data Analyst Sr	Mgmt	6/27/2007	8/27/2007	Nutting, R	
742	704457	DCM	A&T	Vacant	Walruff, Randy	88	6079/A&T Analyst Sr	6456/Data Analyst Sr	Mgmt	6/27/2007	8/27/2007	Nutting, R	

741	705655	DCM	A&T	Holland, Darryl	Tilgner, June	88	6079/A&T Analyst Sr	6456/Data Analyst Sr	Mgmt	6/27/2007	8/27/2007	Nutting, R	
740	New	DCM	Risk Management	None	Anderson, Marc	887	None	Looking for best fit	Mgmt	6/26/2007	8/26/2007	Nutting, R	Request submitted to determine best fit before soliciting funding for new position. 6-26-07 KS
738	705587	Health	CD/OHO/Travel	vacant	Warren, Arlene	88	new	6294/Health Asst 2	Mgmt	6/25/2007	8/25/2007	Tennant, J	Prelim decision is to class as HA 1, sent email to supv for clarification. 7/9/07 JT Revised position description justifies class to HA2; waiting for signed copy of revision before finalizing the approval. 7/11/07 JT
737	706822	DCM	Fac & Prop Mgmt	vacant	Schrotzberger, Jon	701	6121/HVAC Engineer	????/HVAC Eng Asst	Mgmt	6/25/2007	8/25/2007	Busby, C	Multi position class study to create new class - CJB
736	702389	DCM	Fac & Prop Mgmt	vacant	Schrotzberger, Jon	701	6121/HVAC Engineer	????/HVAC Eng Asst	Mgmt	6/25/2007	8/25/2007	Busby, C	Multi position class study to create new class - CJB
735	703063	DCM	Fac & Prop Mgmt	vacant	Schrotzberger, Jon	701	6121/HVAC Engineer	????/HVAC Eng Asst	Mgmt	6/25/2007	8/25/2007	Busby, C	Multi position class study to create new class - CJB
734	707686	DCS	Bridge Engineering	Knieriem, Mark	Henricksen, Jon	88	6232/Eng Tech 2	6233/Eng Tech 3	EE	6/25/2007	8/25/2007	Busby, C	Employee LD as ET3 - not eligible for reclass - call in to Dept HRM - CJB 7/3/07
732	704373	Library	Sellwood-Moreland	Bart, Sharon	Jiminez, Rita	Non-Rep	9784/Library Supervisor	9776/Library Administrator-Branch	EE	6/21/2007	8/21/2007	Busby, C	Message to/from Leila re: we plan to study these classes in the fall. I am holding pending discussion with Leila and Joi - CJB 6/21/07
728	706329	DCHS	Developmental Disabilities	Markins, Karen	Botsford, Patrice	Non Rep	9361/Prog Supv	9615/ Prog Mgr 1	EE	6/18/2007	8/18/2007	Doi, J	
713	700776	Library	Neighborhood Libraries	Uhte, Carol	Jiminez, Rita	Non-Rep	9784/Library Manager/Branch	9776/Library Administrator/Branch	EE	6/15/2007	8/15/2007	Busby, C	Message to/from Leila re: we plan to study these classes in the fall. I am holding pending discussion with Leila and Joi - CJB 6/15/07

711	New	County Atty		Vacant	Sowle, Agnes	Non-Rep	9190/Asst Cty Atty 2	9440/Asst Cty Atty Sr.	Mgmt	6/15/2007	8/15/2007	Nutting, R	
709		DCM	Fac Prop Mgmt	n/a	Schrotzberger, Jon	701	6121/HVAC Engineer	6121/HVAC Engineer	Mgmt	6/13/2007	8/13/2007	Busby, C	Request for review of 13 positions for updating class spec and wage study prior to contract negotiation. KS
707	702681	DCM	CPCA	Vacant	Smith, Brian	88	6002/ OA Sr	6112/ Procurement Assoc.	Mgmt	8/12/2007	8/12/2007	Tennant, J	Prelim decision is to deny request; email to mgr for chance to clarify 7/3/07. JT Ruth, Brian, Jude to meet on 7/10 to discuss. JT
693	705471	DCM	Fleet	None listed	Gardner, Michelle	88	6181 / Body & Fender Mechanic	Add lead designation	Mgmt	5/1/2007	7/1/2007	Busby, C	Denial pending - 7/3/07 - CJB
690	Series	DCHS		Unspecified		88	Case Manager 1, 2, Sr.			4/23/2007		Dof, J	This is a request to look at the Case Manager series as a whole. Due date is not applicable.
673	701587	MCSO	CHL	Smith, Lana	Walliker, Kathy	88	OA Sr / 6002	Background Investigator / 6248	EE	3/26/2007	5/26/2007	Nutting, R	
672	703655	MCSO	Concealed Permit Unit	McSweeney, Linda	Walliker, Kathy	88	OA Sr / 6002	Background Investigator / 6248	EE	3/26/2007	5/26/2007	Nutting, R	
671	703943	MCSO	CHL	Brown, Mary (Jeanne)	Walliker, Kathy	88	OA Sr / 6002	Background Investigator / 6248	EE	3/26/2007	5/26/2007	Nutting, R	
651	None	MCSO	Facility Security Unit	Vacant	Daily, Elizabeth	Non-Rep	None	Operations Supervisor / 9025	Mgmt	2/16/2007		Nutting, R	This is part of the reorganization including requests numbered 628 and 627. Due date not applicable
628	701018	MCSO	Facility Security Unit		Daily, Elizabeth	88	Facility Security Officer/6258	Proposed: Facility Security Operational Supervisor	Mgmt	11/30/2008		Nutting, R	There is an incumbent in this position, but this is NOT a reclass. This is a reorganization, and the position will be opened. Due date is not applicable

Req #	Position Number	Recd	Dept	Unit	Employee	Supervisor	Union	Old Class	New Classification	Submitted By	Outcome	Days in process	C/C Staff
708	New	6/12/2007	DCM	IT	Vacant	Hastings, Chuck	88	N/A	6405/ Dev Anal	Mgmt	Approved	24	Tennant, J
729	712523	6/18/2007	DCHS	DV	Vacant	Rollins, Chiquita	88	6063/Proj Mgr Rep	6087/Res Eval Analyst/Sr	Mgmt	Approved	18	Tennant, J
730	New	6/18/2007	DCHS	MHASD-Commitment Monitor Unit	Vacant	Haffey, Sandy	88	new	6001/OA 2	Mgmt	Approved	18	Tennant, J
731	New	6/18/2007	DCHS	Commitment Monitors/MHASD	Vacant	Haffey, Sandy	88	new	6365/Ment Hlth Coun	Mgmt	Approved	18	Tennant, J
739	705796	6/26/2007	DCM	Fin & Risk, SAP Support	Vacant	Nath, Satish	88	6056/ Learning Systems Analyst Sr	6413/SAP NetWeaver Architect	Mgmt	Approved	13	Tennant, J

7/16/2007

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. _____

Amending MCC Sections 9.160 and 9.170 Relating to County Compensation Plan

(Stricken language is ~~noted~~; double underlined language is new.)

Multnomah County Ordains as follows:

Section 1. MCC Section 9.160 is amended as follows:

9.160 Compensation Plan.

(A) The Chair must maintain a compensation plan. The compensation plan revisions are subject to ~~must be approved~~ by the Board if costs of the revision exceed department or county budgets, or if the revisions are subject to negotiation with appropriate bargaining agents under state law ~~resolution prior to adoption of the annual County budget.~~

(B) It is county policy to establish a compensation plan that provides pay and benefits necessary for the county to recruit, select, and retain qualified employees who are not part of a bargaining unit; recognizes employee performance, growth, and development; maintains an appropriate internal relationship among classification and employees based on job responsibilities, qualifications, and authority, and that maintains parity between equivalent nonrepresented and represented positions.

(C) The compensation plan includes the following benefits defined ~~by Board resolution~~ and implemented by Chair executive rule:

- (1) Paid holidays;
- (2) Paid leaves;
- (3) Leaves of absence without pay;
- (4) Leave-sharing programs;
- (5) Health and welfare benefits;
- (6) Educational assistance programs;
- (7) Deferred compensation programs;
- (8) Flexible spending accounts;
- (9) Pension programs;
- (10) Workers' compensation and supplemental benefits;
- (11) Other benefits to implement subsection (B); and
- (12) Other benefits approved by the Board.

Section 2. MCC Section 9.170 is amended as follows:

§ 9.170 Plan Maintenance.

9.170 Plan Maintenance.

The Chair is responsible for~~will~~ developing and presenting annual compensation plan adjustments recommendations~~for review and approval by~~ to the Board~~resolution~~. These ~~adjustments~~recommendations must be based on periodic surveys of comparable employers, internal classification relationships, financial constraints, and actual or anticipated pay adjustments for nonrepresented employees.

FIRST READING:

December 20, 2007

SECOND READING AND ADOPTION:

January 03, 2008

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By Agnes Sowle, County Attorney

SUBMITTED BY:

Travis Graves, Multnomah County HR Director



MULTNOMAH COUNTY

AGENDA PLACEMENT REQUEST (long form)

APPROVED : MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # R-11 DATE 12-20-07
ANA KARNES, ASST BOARD CLERK

Board Clerk Use Only

Meeting Date: 12/20/07
Agenda Item #: R-11
Est. Start Time: 10:45 AM
Date Submitted: 12/05/06

Agenda Title: NOTICE OF INTENT to Submit a \$50,000 Grant Request to the National Association of Community Health Centers

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

Requested Meeting Date: December 20, 2007 Amount of Time Needed: 5 mins
Department: Health Division: Integrated Clinical Services
Contact(s): Susan Kirchoff
Phone: 503-988-3674 Ext. 25870 I/O Address: 160/8
Presenter(s): Susan Kirchoff, Deborah Cockrell

General Information

1. What action are you requesting from the Board?

Authorize the Director of the Health Department to submit a grant application to the National Association of Community Health Centers (NACHC) requesting \$50,000 to implement minor capital improvements at the Mid-County Health Center. This includes expand the waiting room capacity by 30%, replacing carpet and worn seating, expanding pharmacy work space, and improving client flow.

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 Mid-County Health Center is the highest volume primary care clinic in Multnomah County, and it serves clients in the poorest and most culturally diverse area of the county. Services provided at MCHC include primary care, pharmacy, x-ray services, dental services, refugee screening and WIC (Women, Infants and Children).

At the clinic, primary care services included approximately 33,500 visits last year; the pharmacy filled 56,000 prescriptions; dental care included 10,880 visits; and WIC included 37,856 visits. On an average day there are 350 clients and family members who receive services. The Mid-County Health Center was built in 1990. The increase in volume over the years has resulted in inadequate space and seating in the lobby area. In addition, the carpet and seating, which were last replaced in

1997, are stained and worn beyond repair, and there is a need to expand capacity for pharmacy services to meet the growing need.

MCHC provides culturally competent, comprehensive primary care, preventive health and enabling services such as transportation, translation, case management and health education which address the needs of the whole person. Care that addresses the beliefs and culture of clients is more likely to succeed in improving and maintaining their health. MCHC is tightly linked with refugee resettlement agencies (i.e., SOAR, IRCO, Catholic Charities). In 2006, 963 refugees were screened; of these 55% received on-going medical care. Mid County the highest proportion of non-English speaking residents. About 80% of all clients are or were refugees (Russia, Somalia, Sudan, Latin America, Vietnam, etc.). More than 80% of the MCHC staff speak another language, many were refugees themselves. 68% of clients had incomes at or below 100% of FPL, while 99.1% are at or below 200% of FPL.

Related program offer: This project is related to Program Offer #40022, Mid-County Health Center.

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

This grant will enable the Health Department to make needed improvements to the Mid-County Health Center using grant funding.

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.

The proposed grant will be submitted to the Multnomah County Community Health Council for review. The Council is responsible for approving grant applications that impact the operations of the County's clinical services.

ATTACHMENT A

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?**

The National Association of Community Health Centers (NACHC).

- **Specify grant (matching, reporting and other) requirements and goals.**

The awards will be not less than \$25,000 and not more than \$50,000, and require a DOCUMENTED 1:1 match from private sources. Local match will be provided by CareOregon. Awardees will be expected to complete a final narrative and financial report documenting the costs associated with the project and how they delivered on what they committed to in their applications.

- **Explain grant funding detail – is this a one time only or long term commitment?**

This is a one-time commitment.

- **What are the estimated filing timelines?**

Grant applications are due before December 31, 2007.

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

Grants will be for one year following NACHC decision after January 25, 2008.

- **When the grant expires, what are funding plans?**

The grant will fund one-time needs.

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

Central finance will be charged to the grant (indirect, human resources and Departmental overhead are not applicable to capital projects).

ATTACHMENT B

Required Signatures

Elected Official or
Department/
Agency Director:

Jillian Shirley/wj

Date: 12/06/07

Budget Analyst:

Angela Burdine

Date: 12/06/07



MULTNOMAH COUNTY

AGENDA PLACEMENT REQUEST (long form)

APPROVED : MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # R-12 DATE 12-20-07
ANA KARNES, ASST BOARD CLERK

Board Clerk Use Only

Meeting Date: 12/20/07
Agenda Item #: R-12
Est. Start Time: 10:50 AM
Date Submitted: 12/12/07

BUDGET MODIFICATION: DCHS - 13

Agenda Title: Budget Modification DCHS-13 Increasing Developmental Disabilities Services
Federal/State Appropriation by \$199,077 for Regional Crisis Coordination
Services and 1.28 FTE

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

Requested Meeting Date:	<u>December 20, 2007</u>	Amount of Time Needed:	<u>5 minutes</u>
Department:	<u>County Human Services</u>	Division:	<u>Developmental Disabilities</u>
Contact(s):	<u>Kathy Tinkle</u>		
Phone:	<u>988-3691</u>	Ext.	<u>26858</u>
Presenter(s):	<u>Patrice Botsford</u>	I/O Address:	<u>167/620</u>

General Information

1. What action are you requesting from the Board?

The Department of County Human Services recommends approval of budget modification DCHS-13 to appropriate \$199,077 to Developmental Disabilities for Regional Crisis Coordination Services including 1.28 FTE.

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.

This budget modification reflects changes to the 2007-2009 biennium County Financial Assistance Contract (CFAC) with the State of Oregon via amendment #1 and #6. The contract is routinely amended by the state via Financial Assistance Awards (FAA's). FAA's changes refine and clarify the scope of services delivered and the funding available. This modification increases the resources for Region One, a five-county resource cooperative providing crisis placement for vulnerable clients. Multnomah County Developmental Disabilities acts as the Region's fiscal agent. Additional provider trainings will generate an additional \$1,300 in fee income. This impacts program offer 25015 Crisis Services for Individuals with Developmental Disabilities.

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

This modification increases Developmental Disabilities Services appropriation by \$199,077. Revenue is comprised \$197,777 of service element DD 157 Regional Crisis Coordination Services from amendment one & six, and \$1,300 from provider training fees.

Personnel expenses increase by \$76,744 and 1.28 FTE comprising of a .83 FTE Office Assistant 2 (1.00 FTE annualized) and a .45 FTE Program Development Specialist (.75 FTE annualized). Materials and services increase by \$114,089 of which \$106,019 is for Behavioral Consultation and the sharing of regional resources with participant counties for their liaison staffing to the Region 1 office.

The grant covers administrative costs paying \$4,340 in central indirect and \$3,904 in departmental indirect expenses.

Service reimbursements from the Federal/State fund will be increased as follows: \$15,633 Risk Fund, \$4,340 General Fund, \$2,100 Fleet, and \$7,964 Information Technology Fund. Service reimbursement from the Federal/State fund to Facilities Management fund will decrease by \$22,212.

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.

Clackamas, Clatsop, Columbia, Washington, and Multnomah County Developmental Disabilities programs are Regional partners.

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?**

County Financial Assistance Contract revenue for service element DD 157 is increased by \$197,777 via amendment number one & six. Additional provider trainings increase fee income by \$1,300.

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

Developmental Disabilities Services Division budget increases by \$199,077 (PO 25015). Director's Office budget increases by \$3,904 for departmental indirect (PO 25000). Internal service provider's budgets increase by \$7,825.

- **What do the changes accomplish?**

Brings the budget in line with the current program resources.

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

Yes, adds a .83 FTE Office Assistant 2 and a .45 FTE Program Development Specialist.

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

Service element DD 157 allows indirect costs to be recovered.

- **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?**

No, on-going biennium grant from the State.

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

7/1/07 – 6/30/09

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

This is an on going grant award from the State of Oregon.

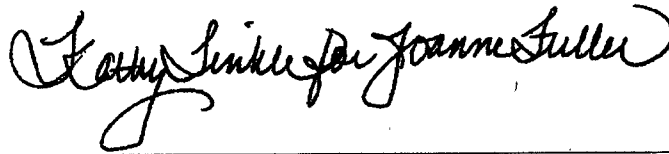
<p><i>NOTE: If a Budget Modification or a Contingency Request attach a Budget Modification Expense & Revenues Worksheet and/or a Budget Modification Personnel Worksheet.</i></p>

ATTACHMENT B

BUDGET MODIFICATION: DCHS - 13

Required Signatures

**Elected Official
or Department/
Agency Director:**



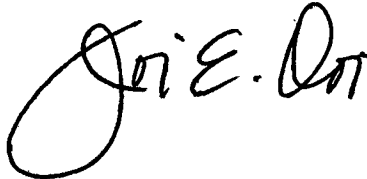
Date: 12/12/07

Budget Analyst:



Date: 12/12/07

Department HR:



Date: 12/12/07

Budget Modification ID: **DCHS-13****EXPENDITURES & REVENUES**

Please show an increase in revenue as a negative value and a decrease as a positive value for consistency with MERLIN.

Budget/Fiscal Year: 2008

Line No.	Fund Center	Fund Code	Func. Area	Program Offer	Accounting Unit		Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
					Cost Center	WBS Element						
1	20-50	81157	40	25015		DD REG 157	50190	(1,002,135)	(1,199,912)	(197,777)		IG-OP Fed thru State
2	20-50	81157	40	25015		DD REG 157	60000	387,045	434,388	47,343		Permanent
3	20-50	81157	40	25015		DD REG 157	60130	124,203	137,971	13,768		Salary Related Fringe
4	20-50	81157	40	25015		DD REG 157	60140	93,258	108,891	15,633		Insurance Benefits
5	20-50	81157	40	25015		DD REG 157	60150	100,000	142,051	42,051		County Match & Sharing
6	20-50	81157	40	25015		DD REG 157	60170	86,857	150,825	63,968		Professional Services
7	20-50	81157	40	25015		DD REG 157	60180	2,295	4,000	1,705		Printing
8	20-50	81157	40	25015		DD REG 157	60210	0	220	220		Rentals
9	20-50	81157	40	25015		DD REG 157	60220	100	135	35		Repairs & Maint
10	20-50	81157	40	25015		DD REG 157	60230	1,748	1,700	(48)		Postage
11	20-50	81157	40	25015		DD REG 157	60240	3,740	19,320	15,580		Supplies
12	20-50	81157	40	25015		DD REG 157	60260	2,082	2,700	618		Travel & Training
13	20-50	81157	40	25015		DD REG 157	60270	6,600	7,500	900		Local Travel/Mileage
14	20-50	81157	40	25015		DD REG 157	60340	200	108	(92)		Dues & Subs
15	20-50	81157	40	25015		DD REG 157	60350	21,997	26,337	4,340		Central Indirect 2.29%
16	20-50	81157	40	25015		DD REG 157	60355	19,581	23,485	3,904		Department Indirect 2.06%
17	20-50	81157	40	25015		DD REG 157	60370	17,500	22,000	4,500		Telephone
18	20-50	81157	40	25015		DD REG 157	60380	44,536	48,000	3,464		Data Processing Svcs
19	20-50	81157	40	25015		DD REG 157	60410	3,300	5,400	2,100		Motor Pool
20	20-50	81157	40	25015		DD REG 157	60430	70,612	48,400	(22,212)		Building Management
21												
22	20-50	49000	40	25015		DD REG TRG FEES	50220	(8,400)	(9,700)	(1,300)		Licenses & Fees
23	20-50	49000	40	25015		DD REG TRG FEES	60170	0	7,500	7,500		Professional Services
24	20-50	49000	40	25015		DD REG TRG FEES	60180	2,300	500	(1,800)		Printing
25	20-50	49000	40	25015		DD REG TRG FEES	60210	100	200	100		Rentals
26	20-50	49000	40	25015		DD REG TRG FEES	60230	0	1,000	1,000		Postage
27	20-50	49000	40	25015		DD REG TRG FEES	60240	6,000	1,000	(5,500)		Supplies
28												
29												
										0	0	Total - Page 1
										0	0	GRAND TOTAL

Budget Modification ID: **DCHS-13****EXPENDITURES & REVENUES**

Please show an increase in revenue as a negative value and a decrease as a positive value for consistency with MERLIN.

Budget/Fiscal Year: 2008

Line No.	Fund Center	Fund Code	Func. Area	Accounting Unit			Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
				Program Offer	Cost Center	WBS Element						
30	26-00	1000	40	250000		CHSDO.IND1000	50370		(3,904)	(3,904)		Dept Indirect
31	26-00	1000	40	250000		CHSDO.IND1000	60240		3,904	3,904		Supplies
32												
33	19	1000	20		9500001000		50310		(4,340)	(4,340)		Svc Reim F/S to General
34	19	1000	20		9500001000		60470		4,340	4,340		Contingency
35												
36	72-10	3500	20		705210		50316		(15,633)	(15,633)		Svc Reim F/S to Risk
37	72-10	3500	20		705210		60330		15,633	15,633		Claims Paid
38												
39	72-55	3501	20		904100		50310		(2,100)	(2,100)		Svc Reim F/S to Fleet
40	72-55	3501	20		904100		60240		2,100	2,100		Supplies
41												
42	72-60	3503	20		709525		50310		(4,500)	(4,500)		Svc Reim F/S to Info Tech
43	72-60	3503	20		709525		60200		4,500	4,500		Communications
44												
45	72-60	3503	20		709105		50310		(3,464)	(3,464)		Svc Reim F/S to Info Tech
46	72-60	3503	20		709105		60240		3,464	3,464		Supplies
47												
48	72-50	3505	20		902575		50310		22,212	22,212		Svc Reim F/S to Fac Mgmt
49	72-50	3505	20		902575		60170		(22,212)	(22,212)		Professional Services
50												
51												
52												
53												
54												
55												
56												
57												
58												
										0	0	Total - Page 2
										0	0	GRAND TOTAL

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

						ANNUALIZED			
Fund	Job #	HR Org	Position Title	Position Number	FTE	BASE PAY	FRINGE	INSUR	TOTAL
1505	6021	61137	Prg Devel Specialist	New	0.75	36,128	10,506	9,663	56,297
1505	6001	61137	OA2	New	1.00	30,923	8,992	11,849	51,764
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
TOTAL ANNUALIZED CHANGES					1.75	67,051	19,498	21,512	108,061

CURRENT YEAR PERSONNEL DOLLAR CHANGECalculate 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	Position Title	Position Number	FTE	BASE PAY	FRINGE	INSUR	TOTAL
1505	6021	61137	Prg Devel Specialist	New	0.45	21,677	6,304	5,798	33,779
1505	6001	61137	OA2	New	0.83	25,666	7,464	9,835	42,965
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
									0
TOTAL CURRENT FY CHANGES					1.28	47,343	13,768	15,633	76,744



MULTNOMAH COUNTY

AGENDA PLACEMENT REQUEST (long form)

APPROVED : MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # R-13 DATE 12-20-07
ANA KARNES, ASST BOARD CLERK

Board Clerk Use Only

Meeting Date: 12/20/07
Agenda Item #: R-13
Est. Start Time: 10:55 AM
Date Submitted: 12/12/07

BUDGET MODIFICATION: DCHS - 19

**Budget Modification DCHS-19 Eliminating 1.42 FTE Case Manager Positions
and Adding 1.34 FTE New Office Assistant Positions to Better Meet Workload**
Title: Demand in Aging and Disability Services Division

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

Requested Meeting Date:	<u>December 20, 2007</u>	Amount of Time	<u>5 minutes</u>
Department:	<u>Dept of County Human Services</u>	Division:	<u>Aging & Disability Services</u>
Contact(s):	<u>Kathy Tinkle</u>		
Phone:	<u>(503) 988-3691</u>	Ext.	<u>83691</u>
	I/O Address:		<u>167/1/620</u>
Presenter(s):	<u>Mary Shortall</u>		

General Information

1. What action are you requesting from the Board?

The Department of County Human Services recommends approval of budget modification DCHS-19 which will more closely align staff and resources with current workloads and operational needs in the Aging and Disability Services Division (ADSD), Long Term Care (LTC) offices. The modification will eliminate two vacant Case Manager 2 positions (.90 FTE) and one vacant Case Manager Assistant position (1.00 FTE). Two Case Manager 1 positions will be increased from .33 FTE and .53 FTE to .67 FTE, respectively. In addition, two new office assistant positions will be created: .67 FTE Office Assistant Senior and .67 FTE Office Assistant 2.

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 purpose of this action is to reflect ADSD, LTC Program effort and deploy staff in accordance with changes in work activity. These changes were prompted by a growing eligibility caseload in East County and the results of a LTC Business Services Process Study conducted last spring that indicated a shortage of support staff based on current workload. Recent caseload projections from

the state show growth in our eligibility caseloads in East County. Our internal tracking supports this trend as well. The population in general has been growing in East County for several years now, probably because of more affordable housing. We have seen a slow steady increase in caseloads in our Mid and East County offices over the past several years as well. We watch total caseloads by office regularly and add, delete, shift resources (positions) to balance the workload as appropriate. Adding Office Assistants in areas of need will improve business support capacity in the East and West areas, and increasing existing Case Manager 1 positions to full time will address the growing eligibility workload in East County.

These changes impact Program Offer 25023A.

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

This budget modification is expense and revenue neutral for FY 2008. Personnel costs decrease by \$26,119. This decrease is offset with a like increase in professional services in the North/Northeast and Mid-County Long Term Care offices and will be used for intake process improvement studies.

Annualized personnel costs increase by \$16,324 (.70 FTE). We budget a smaller share of our biennial allocation of Title XIX (usually around 49%) during the first year of the biennium and a large share (51%) the second year to account for annual cost increases, such as personnel.

Service reimbursement from the Federal/State fund to the Risk fund decreases by \$1,911.

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?

N/A

- What budgets are increased/decreased?

There is no net change to the Aging & Disability Services budget.

The Risk Management internal service budget is decreased by \$1,911.

- What do the changes accomplish?

The position changes will facilitate the alignment of staff and resources with the workload and operational needs in the Aging & Disability Services, Long Term Care offices.

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

Yes. This budget modification reflects the following position changes:

- Eliminates vacant .42 FTE Case Manager 2 position - .50 FTE annualized
- Eliminates vacant .48 FTE Case Manager 2 position - .50 FTE annualized
- Eliminates vacant 1.00 FTE Case Manager Assistant position - 1.00 FTE annualized
- Increases Case Manager 1 position from .33 FTE to .67 FTE - .50 FTE to 1.00 FTE annually
- Increases Case Manager 1 position from .53 FTE to .67 FTE - .80 FTE to 1.00 FTE annually
- Creates a new .67 Office Assistant Senior position - 1.00 FTE annualized
- Creates a new .67 Office Assistant 2 position - 1.00 FTE annualized

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

Indirect 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?

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

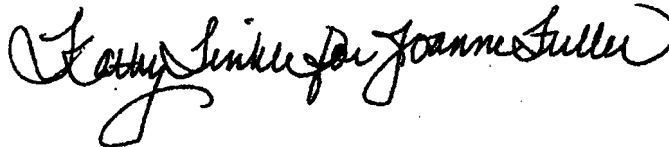
<p><i>NOTE: If a Budget Modification or a Contingency Request attach a Budget Modification Expense & Revenues Worksheet and/or a Budget Modification Personnel Worksheet.</i></p>

ATTACHMENT B

BUDGET MODIFICATION: DCHS – 19

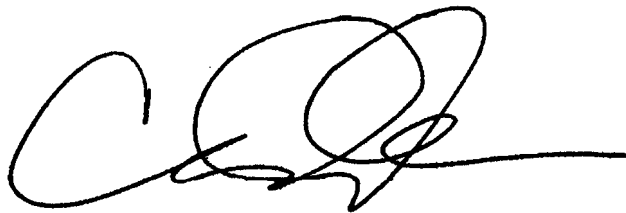
Required Signatures

**Elected Official
or Department/
Agency Director:**



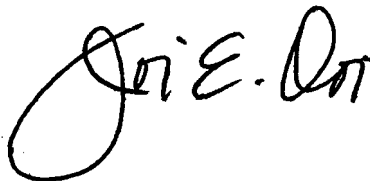
Date: 12/12/07

Budget Analyst:



Date: 12/12/07

Department HR:



Date: 12/12/07

Budget Modification ID: **DCHS-19****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: 2008

Line No.	Fund Center	Fund Code	Program #	Func. Area	Internal Order	Accounting Unit		Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
						Cost Center	WBS Element						
1	30-55	26090	25023A	40			ADSDIVLTCNNEXIX	60000		(45,810)	(45,810)		Base [705480, 700964]
2	30-55	26090	25023A	40			ADSDIVLTCNNEXIX	60130		(14,700)	(14,700)		Fringe
3	30-55	26090	25023A	40			ADSDIVLTCNNEXIX	60140		(11,711)	(11,711)		Insurance
4	30-55	26090	25023A	40			ADSDIVLTCNNEXIX	60170		15,649	15,649		Professional Services
5	30-55	26090	25023A	40			ADSDIVLTCNNEXIX	60355		(1,165)	(1,165)		Dept Indirect [2.06%]
6	30-55	26090	25023A	40			ADSDIVLTCNNEXIX	60350		(1,295)	(1,295)		Central Indirect [2.29%]
7	30-55	26090	25023A	40			ADSDIVLTCNNEXIX	50190		59,032	59,032		IG-OP Fed Thu State
8													
9	30-55	26090	25023A	40			ADSDIVLTCEDXIX	60000		34,218	34,218		Base [705229, New OA2]
10	30-55	26090	25023A	40			ADSDIVLTCEDXIX	60130		10,396	10,396		Fringe
11	30-55	26090	25023A	40			ADSDIVLTCEDXIX	60140		12,108	12,108		Insurance
12	30-55	26090	25023A	40			ADSDIVLTCEDXIX	60355		1,168	1,168		Dept Indirect [2.06%]
13	30-55	26090	25023A	40			ADSDIVLTCEDXIX	60350		1,299	1,299		Central Indirect [2.29%]
14	30-55	26090	25023A	40			ADSDIVLTCEDXIX	50190		(59,189)	(59,189)		IG-OP Fed Thu State
15													
16	30-55	26090	25023A	40			ADSDIVLTCMCXIX	60000		(28,289)	(28,289)		Base [703527, 700667]
17	30-55	26090	25023A	40			ADSDIVLTCMCXIX	60130		(9,078)	(9,078)		Fringe
18	30-55	26090	25023A	40			ADSDIVLTCMCXIX	60140		(10,362)	(10,362)		Insurance
19	30-55	26090	25023A	40			ADSDIVLTCMCXIX	60170		10,470	10,470		Professional Services
20	30-55	26090	25023A	40			ADSDIVLTCMCXIX	60355		(767)	(767)		Dept Indirect [2.06%]
21	30-55	26090	25023A	40			ADSDIVLTCMCXIX	60350		(854)	(854)		Central Indirect [2.29%]
22	30-55	26090	25023A	40			ADSDIVLTCMCXIX	50190		38,880	38,880		IG-OP Fed Thu State
23													
24	30-55	26090	25023A	40			ADSDIVLTCWDXIX	60000		22,509	22,509		Base [New OA Sr]
25	30-55	26090	25023A	40			ADSDIVLTCWDXIX	60130		6,546	6,546		Fringe
26	30-55	26090	25023A	40			ADSDIVLTCWDXIX	60140		8,054	8,054		Insurance
27	30-55	26090	25023A	40			ADSDIVLTCWDXIX	60355		764	764		Dept Indirect [2.06%]
28	30-55	26090	25023A	40			ADSDIVLTCWDXIX	60350		850	850		Central Indirect [2.29%]
29	30-55	26090	25023A	40			ADSDIVLTCWDXIX	50190		(38,723)	(38,723)		IG-OP Fed Thu State
											0	0	Total - Page 1
											0	0	GRAND TOTAL

Budget Modification ID: **DCHS-19****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: 2008

Line No.	Fund Center	Fund Code	Program #	Func. Area	Internal Order	Accounting Unit		Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
						Cost Center	WBS Element						
30	72-10	3500		20		705210		50316		1,911	1,911		Insurance Revenue
31	72-10	3500		20		705210		60330		(1,911)	(1,911)		Claims Paid
32													
33													
34													
35													
36													
37													
38													
39													
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56													
57													
58													
											0	0	Total - Page 2
											0	0	GRAND TOTAL



MULTNOMAH COUNTY

AGENDA PLACEMENT REQUEST (long form)

APPROVED : MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # R-14 DATE 12-20-07
ANA KARNES, ASST BOARD CLERK

Board Clerk Use Only

Meeting Date: 12/20/07
Agenda Item #: R-14
Est. Start Time: 11:00
Date Submitted: 12/06/07

BUDGET MODIFICATION: DCJ - 16

Agenda Title: Budget Modification DCJ-16 Authorizing General Fund Contingency Transfer in the Amount of \$142,462 to Fund Phase 2 of the Court Appearance Notification System

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

Requested Meeting	<u>December 20, 2007</u>	Amount of Time Needed:	<u>20 minutes</u>
Department:	<u>Dept. of Community Justice</u>	Division:	<u>Adult Services Division</u>
Contact(s):	<u>Shaun Coldwell</u>		
Phone:	<u>503-988-3961</u>	Ext.	<u>83961</u>
	I/O Address:		<u>503 / 250</u>
Presenter(s):	<u>Carl Goodman, Wende Hickman and Matt O'Keefe</u>		

General Information

1. What action are you requesting from the Board?

The Department of Community Justice (DCJ) requests approval of a budget modification to transfer \$142,462 out of General Fund Contingency in order to implement Phase 2 of the Court Appearance Notification System (CANS) expansion.

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.

This budget modification is in response to a budget note in the FY 2008 adopted budget which earmarked \$240,000 in General Fund Contingency for the expansion of CANS and shifted the administration of the project from LPSCC to DCJ.

Phase 1 of this project was approved by the Board of County Commissioners on September 20, 2007 and transferred \$97,538 out of General Fund Contingency, leaving a balance of \$142,462 (see budget modification DCJ-05). Phase 1 increase the court notifications from 18,000 to 72,000 defendants by expanding CANS to all Multnomah County Circuit Courts (18,000 + 54,000). DCJ is

now requesting the remaining \$142,462 from General Fund Contingency in order to implement phase 2 of the CANS project expansion.

This budget modification requests the remaining funds set aside in contingency in order to implement Phase 2 of CANS which will expand the program to DCJ. DCJ presently has over 9,400 adult offenders on active community supervision. The Phase 2 expansion of CANS will use automated reminder calls to notify this population of current supervision fee and restitution payment obligations. Based on DCJ research, the following are eligible cases and annual notification volume estimates for CANS Phase 2:

Phase 1 Expansion (*Circuit Court Hearings*)

Cost: Phase 1 expansion fully funded

Goal: 72,000 annual notifications

Target Population: Adult adjudicated and non-adjudicated offenders.

- Scheduled Court Hearing reminders (1500-6000 hearings/month)

Phase 2 Expansion (*DCJ program areas*)

Cost: \$142,462 (6 months)

Goal: 132,000 to 204,000 annual notifications

Target Population: Adult offenders on active DCJ supervision.

- Victims' Restitution payment reminders (3000-5000 cases/month)
- Supervision Fee payment reminders (7000-9000 cases/month)
- Payment delinquency notice (1000-3000 cases/month)

The goals of this expansion include:

- 75% Successful Client Contact Rate
- Improved collection rate for successfully contacted cases

If these goals are achieved, the County could expect the following outcomes:

- Increased victim's restitution collection rate.
- Increased supervision fee collection rate.

Program performance measures have been drafted for the Phase 2 expansion of CANS to DCJ. These performance measures are based on research of Statewide and County measures for restitution and supervision fee collection. The outputs and outcomes that will be purchased by the County are as follow:

- Restitution notification (output): 40,000 annual notifications
- Restitution collection rate (outcome): 23-25%
- Supervision fee notification (output): 100,000 annual notifications

Supervision fee collection rate (outcome): 35%

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

This budget modification includes expenditures covering the period of January 1, 2008 through June 30, 2008. This project is expected to be on-going and included in DCJ's FY 2009 budget.

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.

Implementation of the CANS program has been led by a cross-jurisdictional oversight committee.

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?

DCJ Adult Services Division budget is increased by \$142,462

General Fund Contingency is decreased by \$142,462

- What do the changes accomplish?

Implementation of Phase 2 of the CANS project which expands CANS to DCJ

- 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?

This function will be ongoing and will impact general fund expenditures in FY 2009.

- 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?

This expenditure was set aside in a budget note in the FY 2008 adopted budget.

- “The existing CANS project was funded for FY 2008, but an additional \$240,000 has been earmarked in Contingency to expand the CANS project and to shift the responsibility of the project from the Local Public Safety Coordinating Council (LPSCC) to the County’s Department of Community Justice” (per the FY 2008 Adopted Budget).

- What efforts have been made to identify funds from other sources within the Department/Agency to cover this expenditure?

N/A

- Why are no other department/agency fund sources available?

N/A

- 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?

Projected increase in Supervision Fee Collection: \$37,244 – \$111,732 annually.

Projected increase in Victims' Restitution Collection: \$25,095 – \$35,580 annually.

- **Has this request been made before? When? What was the outcome?**

Yes. On September 20, 2007 the Board of County Commissioners approved the transfer of General Fund Contingency to DCJ in the amount of \$97,538 to fund phase 1 of the CANS project expansion (see budget modification DCJ-05).

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: DCJ - 16

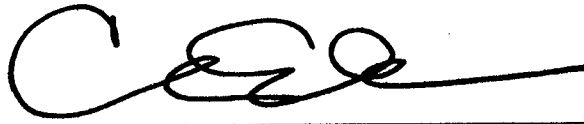
Required Signatures

**Elected Official or
Department/
Agency Director:**

Handwritten signature of Scott Taylor

Date: 12-12-07

Budget Analyst:

Handwritten signature of Budget Analyst

Date: 12-13-07

Budget Modification ID: **DCJ-16****EXPENDITURES & REVENUES**

Please show an increase in revenue as a negative value and a decrease as a positive value for consistency with MERLIN.

Budget/Fiscal Year: 2008

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						
1	50-10	1000		50		502250	60170	108,000	250,462	142,462		Professional Services
2									0		142,462	Add Phase 2 of CANS to DCJ
3									0			
4	19	1000		20		9500001000	60470		(142,462)	(142,462)		Contingency
5									0		(142,462)	Reduce CGF Contingency
6									0			
7									0			
8									0			
9									0			
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26									0			
27									0			
28									0			
29									0			
										0	0	Total - Page 1
										0	0	GRAND TOTAL



Department of County Management
MULTNOMAH COUNTY OREGON

Budget Office

501 SE Hawthorne Blvd., Suite 531
Portland, Oregon 97214
(503) 988-3312 phone
(503) 988-4570 fax
(503) 988-5170 TDD

TO: Board of County Commissioners

FROM: Christian Elkin, Senior Budget Analyst

DATE: December 11, 2007

SUBJECT: General Fund Contingency Request for \$142,462 to fund Phase 2 of the Court Appearance Notification System (CANS) expansion (Budget Modification DCJ-16).

A \$142,462 General Fund Contingency request is being proposed to support the expansion of the CANS program to expand the program to the Department of Community Justice's to remind offenders under supervision that they have restitution or supervision payments due. The costs include increasing the contract to cover increased case event volume.

A set-aside of \$240,000 was placed in contingency for the CANS program and identified in the following budget note:

The Court Appearance Notification System (CANS) reduces the failure to appear (FTA) rate in Multnomah County. CANS operates by placing automated telephone calls to defendants prior to their court hearing to remind them of where and when to appear.

In the first four months of FY 2007, CANS helped prevent over 550 instances of FTA and 380 FTA warrants, resulting in over \$600,000 of cost avoidance to Multnomah County's criminal justice system. FTA rates for hearings receiving CANS reminder calls are approximately 16%, a 45% reduction versus FTA rates for hearings not receiving reminder calls. This year, CANS is projected to avoid a minimum of \$1.9 million in costs associated with FTA for Multnomah County's criminal justice system.

The existing CANS project was funded for FY 2008, but an additional \$240,000 has been earmarked in Contingency to expand the CANS Project and to shift responsibility of the project from the Local Public Safety Coordinating Council (LPSCC) to the County's Department of Community Justice.

General Fund Contingency Policy Compliance

The Budget Office is required to inform the Board if contingency requests submitted for approval satisfy the financial policies adopted by the Board of County Commissioners for using General Fund Contingency.

- Criteria 1 – States contingency requests should be for one-time-only purposes.
The request is not one time only in nature, this funding was included in DCJ's FY 2009 constraint.
- Criteria 2 – Addresses emergencies and unanticipated situations necessary to keep a public commitment or fulfill a legislative or contractual mandate or which can be demonstrated to result in significant administrative or programmatic efficiencies that cannot be covered by existing appropriations.
The request is not an emergency or unanticipated.
- Criteria 3 – Addresses items identified in Board Budget Notes.
The funding request does address items identified in a budget note (see above).

This request meets the intent of the above contingency financial policies; therefore, assuming the conditions of the budget note have been met to the satisfaction of the Board of County Commissioners, the request should be granted.

Court Appearance Notification System (CANS)

Project Expansion Update
December 2007

Introduction

CANS project uses automated notification calls to reduce Failure To Appear (FTA) at Circuit Court Hearings.

- FTA rate CANS hearings is 14% (2007 YTD).
- Over 1,300 FTAs and 950 FTA warrants avoided (2007 YTD).
- Total cost avoidance \$1.3 million, over \$400,000 in costs avoided for Multnomah County (2007 YTD).

CANS is expanding to notify for more Circuit Court hearings and court mandated conditions of DCJ clients.

Expansion Update

Procurement Process:

- RFP issued, 10 proposals received and evaluated.
- Procurement will allow for Phase 1 and Phase 2 expansion.
- Service provider selected, contract negotiations underway.

Program Development:

- Scoping meetings conducted; project stakeholders, DCJ senior managers and county staff consulted.
- Project models researched and performance measures drafted.
- Working with vendor to create notification messages and monthly outcome reports.

Circuit Courts Expansion

- ◆ Expansion will increase use court hearing reminders in the Circuit Courts.
- ◆ Monthly notification volume is expected to increase substantially.
- ◆ Anticipated *increase* in FTA related cost avoidance for county agencies.
- ◆ Phase 1 Expansion is funded and ready to proceed once a contract is in place.

DCJ Expansion

- ◆ Expansion will increase use of automated notifications to DCJ clients.
- ◆ DCJ is prepared to deploy this technology for targeted DCJ applications.
- ◆ Anticipated *increase* in DCJ client compliance with court mandated supervision conditions.
- ◆ Phase 2 Expansion requires funding to proceed.

DCJ Expansion Process

Application areas investigated include:

- Collections
- Appointment Reminders
- Scheduling / Case Management Functions

Important criteria for selecting areas:

- Reliable and accessible case data w/client phone number.
- Regularly reported outcomes, program performance data.
- Minimum caseload volume.

DCJ Notification Applications

Collections Applications:

- Victims Restitution (3000-5000 cases/month)
- Supervision Fees (7000-9000 cases/month)
- Delinquency Notices (1000-3000 cases/month)

Anticipated outcomes:

- Improved DCJ client compliance with supervision conditions
- Increased Victims Restitution collection
- Increased Supervision Fee collection

Populations Impacted:

- Adult offenders under active DC supervision
- Low-to-High Risk offenders

More DCJ Applications:

More opportunities exist to enhance DCJ programs with CANS technology.

- Child Support Enforcement
- Londer Learning Center
- Community Service
- Pretrial Services Program
- COG groups / DRC sessions
- Sex Offender Program
- Drug and Alcohol Treatment

DCJ continues to scope these areas for future CANS applications.

DCJ Expansion Costs:

Expansion Contract Cost: \$142,462

- ◆ Funding will be used to purchase notifications for CANS Expansion to DCJ.
- ◆ Personnel cost for program development and performance monitoring funded by Phase 1 Expansion.

Expansion Goal (FY 08):

- ◆ 95,000-150,000 notifications delivered

Anticipated outcomes (FY 08):

- ◆ Increased Restitution collection (\$12,547 - \$17,790)
- ◆ Increased Supervision fee collection (\$18,622 - \$55,866)

Conclusion

Thank You!

For a copy of the presentation please contact:
Matt O'Keefe
Department of Community Justice
503-988-3701 x24277

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MULTNOMAH COUNTY

AGENDA PLACEMENT REQUEST (long form)

APPROVED : MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # R-15 DATE _____
ANA KARNES, ASST BOARD CLERK

Board Clerk Use Only

Meeting Date: 12-20-07
Agenda Item #: R-15
Est. Start Time: 11:20
Date Submitted: 12-14-07

BUDGET MODIFICATION: DCS-06

Agenda Title: Budget Modification DCS-06 Increasing County FY08 Revenue and Expense by \$368,387 for Approved Fiscal Year 2007 State Homeland Security Grant

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

Requested Meeting Date: 12/20/07 Amount of Time Needed: 10 Minutes
Department: Chair's Office Division: Emergency Management
Contact(s): George Whitney
Phone: (503)988-4580 Ext. 84580 I/O Address: _____
Presenter(s): George Whitney

General Information

1. What action are you requesting from the Board?

Approval of Budget Modification to increase County FY08 revenue and expense by \$368,387 for recently approved Federal Fiscal Year 2007 (FFY07) State Homeland Security Grant.

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.

In response to our application last July, the State of Oregon, Office of Emergency Management has awarded a total of \$920,967 for three projects. The projects listed below are funded at the designated levels:

- Emergency Operations Plan Enhancement for County and region (\$440,000 State Homeland Security Program (SHSP) funds). These funds will be used to develop a County Disaster Recovery Plan, Emergency Operations Plans for East county jurisdictions and a regional response plan to meet the needs of vulnerable populations.
- Communications (\$81,400 SHSP and \$362,817 Law Enforcement Terrorism Prevention Program (LETPP)). These funds will be used to deploy an emergency public information system, radios for emergency response vehicles and mobile data computers or East

County police vehicles.

- Outreach and Training for Vulnerable Populations (\$36,750 Citizen Corps Program (CCP)). These funds will be used to support outreach, training, and exercise of citizen responders and non-governmental organizations active in disaster.

Revenue and expense related to these projects will take place over the next two years, so only a portion will be planned in the County FY08 budget.

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

Approval of this Budget Modification would increase revenue and expense in FY 08 budget for Multnomah County Emergency Management by \$368,387. The remainder of these funds will be programmed in future budget processes.

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?**

Grant Revenue is being increased due to the grant award.

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

The budget of Multnomah County Emergency Management will increase by \$368,387 in Grant Revenue and Expense.

- **What do the changes accomplish?**

This Budget Modification will allow the County and region to spend grant funds to enhance their emergency operations plans, improve communication networks and provide outreach to vulnerable populations.

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

A limited duration grant administrator will be hired to work on this grant.

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

The grant allows up to 3% for indirect costs.

- **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 grant covers specific projects to be completed within the next two years.

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

July 1, 2007 through June 30, 2010

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

None, the grant is for specific projects to improve current systems and should not increase operating costs in the future.

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

ATTACHMENT B

BUDGET MODIFICATION: DCS- 06

Required Signatures

**Elected Official or
Department/
Agency Director:**



Date: 12-14-07

Budget Analyst:



Date: 12-14-07

Budget Modification ID: **DCS-06****EXPENDITURES & REVENUES**

Please show an increase in revenue as a negative value and a decrease as a positive value for consistency with MERLIN.

Budget/Fiscal Year: 2008

Line No.	Fund Center	Fund Code	Func. Area	Accounting Unit			Cost Element	Current Amount	Revised Amount	Change Increase/ (Decrease)	Subtotal	Description
				Internal Order	Cost Center	WBS Element						
1	91-20	1505	0020			EM010CEM	50190	(250,000)	(618,387)	(368,387)		Increase IG-OP Fed thru State
2	91-20	1505	0020			EM010CEM	60100	0	13,815	13,815		Increase Temporary Labor
3	91-20	1505	0020			EM010CEM	60160	125,000	136,640	11,640		Increase Pass Through
4	91-20	1505	0020			EM010CEM	60170	0	32,980	32,980		Increase Prof Services
5	91-20	1505	0020			EM010CEM	60200	0	276,432	276,432		Increase Communications
6	91-20	1505	0020			EM010CEM	60260	0	22,468	22,468		Increase Education & Training
7	91-20	1505	0020			EM010CEM	60350		11,052	11,052	(0)	3% indirect per grant
									0			
9	19	1000	0020		9500001000		50310		(11,052)	(11,052)		Add indirect revenue (3%)
10	19	1000	0020		9500001000		60470		11,052	11,052		Increase GF contingency
11									0			
12									0			
13									0			
14									0			
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