



AGENDA CITY COUNCIL

91136 N Willamette Street

541-682-7852 | coburgoregon.org

Tuesday, April 09, 2024 at 6:00 PM

CALL THE CITY COUNCIL MEETING TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

MAYOR COMMENTS

- [1.](#) Council Appointment Review

AGENDA REVIEW

PUBLIC COMMENT (*Sign up prior to meeting. Limit 3 minutes.*)

CONSENT AGENDA (*Councilors may remove an item from the "Consent" agenda for discussion by requesting such action prior to consideration.*)

- [2.](#) Minutes February 10, 2024 City Council Retreat
- [3.](#) Minutes March 5, 2024 City Council Work Session

SPECIAL GUEST

State Representative, Charlie Conrad - District 12

ORDINANCES, RESOLUTIONS AND CONTRACTS

- [4.](#) Second Reading
ORDINANCE A-255 AN ORDINANCE REPEALING ORDINANCE A-91-C AND AUTHORIZING THE ADOPTION OF PUBLIC CONTRACTING RULES AND STAFF SPENDING AUTHORITY BY RESOLUTION

- [5.](#) **CALL TO ORDER THE LOCAL CONTRACT REVIEW BOARD**

Joint Public Hearing on DRAFT findings supporting the exemption of certain classes of special procurements and public improvement contracts for competitive bidding requirements.

RESOLUTION 2024-02 A RESOLUTION OF THE CITY OF COBURG AND LOCAL CONTRACT REVIEW BOARD OPTING OUT OF THE ATTORNEY GENERAL'S MODEL PUBLIC CONTRACTING RULES AND ADOPTING PUBLIC CONTRACTING RULES FOR THE CITY OF COBURG

- [6.](#) **RESOLUTION 2024-03** A RESOLUTION ESTABLISHING PURCHASING AUTHORITY AND SPENDING LIMITS FOR THE CITY OF COBURG STAFF

- [7.](#) Pavilion Park Phase 1 Sub Contract(s) Pre-Authorization

- [8.](#) **RESOLUTION 2024-04** A RESOLUTION ADOPTING THE FY 2024-25 CAPITAL IMPROVEMENT PLAN

- [9.](#) Umpqua Valley Finance Contract for Audit Service

COUNCIL ACTION ITEMS

ADMINISTRATIVE INFORMATION REPORTS

- [10.](#) Annual Comprehensive Financial Report for FY 2022-23
- 11. Administration Monthly Report

COUNCIL COMMENTS LIAISON UPDATES

- 12. Finance Audit Committee Report to Council

UPCOMING AGENDA ITEMS**FUTURE MEETINGS**

- April 10 Heritage Committee
- April 16 Park | Tree Committee
- April 17 Planning Commission
- April 23 Finance | Audit Committee
- April 25 Transportation Safety Ad-Hoc
- May 7 Budget Committee
- May 8 Heritage Committee
- May 14 City Council
- May 28 Budget Committee

ADJOURNMENT

The City of Coburg will make reasonable accommodations for people with disabilities. Please notify City Recorder 72 hours in advance at 541-682-7852 or sammy.egbert@ci.coburg.or.us

All Council meetings are recorded and retained as required by ORS 166-200-0235.

From: Brandon Rhodes <bdrhodes@icloud.com>

Sent: Thursday, March 28, 2024 3:12 PM

To: COBURG Mayor <mayor@ci.coburg.or.us>; HANKS Adam <adam.hanks@ci.coburg.or.us>; EGBERT Sammy <sammy.egbert@ci.coburg.or.us>

“Mayor Bell and the Coburg City Council –

I was honored to be appointed last month to serve Coburg with you on City Council. The weeks since that appointment has kept my mind buzzing. I’d be up late with ideas for how to contribute to policies that will promote a future of flourishing and connection for all Coburgers. It’s been fun.

As you know the City Charter requires all councilors to reside in Coburg. Well, funny thing: city staff recently discovered that the line between *Coburg* and *not-Coburg* runs right through my front yard... and our house is on the *not-Coburg* side of it.

Therefore, I do not qualify for serving on City Council, and so offer my resignation from this office which I suppose I didn’t properly occupy to begin with. While I am disappointed, I am grateful to City Administrator Adam Hanks, City Recorder Sammy Egbert, and Mayor Nancy Bell for their dedicated investigation into our options on this matter. I am also now interested in joining the Planning Commission, whenever an opportunity allows.

Thank you,
Brandon Rhodes



MINUTES

City Council Annual Retreat

February 10, 2024 at 9:00

Coburg City Hall

91136 N Willamette Street

MEMBERS PRESENT: Nancy Bell; Mayor, John Fox, Cathy Engebretson, Claire Smith, John Lehmann, Alan Wells

MEMBERS ABSENT: None

STAFF PRESENT: Adam Hanks; City Administrator

WELCOME

RETREAT SUMMARY

Mayor Bell opened the meeting with a thank you to Council for dedicating an almost full day of a weekend to working on future Council planning and goalsetting for the community.

Hanks then welcomed and thanked everyone for attending and went through the planned agenda for the day stating that the structure is open to changes in order and topic time limits are only approximate to help keep the process on track and completed by the agreed upon finish time of 3:00.

Hanks went through the agenda packet briefly describing each of the documents, stating that the overarching objective is to ensure that the draft "Framework" document adequately contains the broad objectives that Council is interesting in having staff work on and present to Council over the next 18-24 months.

Hanks provided a summary of the current year (FY23-24) Council adopted workplan indicating that there were 88 individual tasks/actions sorted within seven categories/headings. Hanks urged Council to consider elevating the discussion towards more policy level goals and objectives that then allow staff to develop action plans and individual tasks that support and implement the objectives at a later date. Hanks also noted that many of the current tasks/actions have been worked on and many more accomplished as displayed in the FY23-24 Workplan spreadsheet in the packet that is sorted by category and also by status.

Hanks noted that most of the tasks/actions that have not yet been completed fit within the draft Framework in one way or another and staff will continue to move forward and update Council on these items as time goes by.

To test the adequacy of the draft Framework, Council was asked to individually develop their top three issues in three timeframes; 1-2 years (short term), 5-7 year (mid-term), 7 + years (long-term). Council then placed their issues on the wall board and Hanks went through each asking questions, sorting the issues into groups and verifying with Council where each best fits within the draft Framework document.

Hanks and Council also discussed Commission and Committee goals and workplans and the Council’s role in shaping the work of these advisory bodies. Hanks noted that the majority of the Framework objectives connected with Commissions and Committees, some fundamentally and some at least ancillary.

Council agreed that, with the understanding that resolution to the prior issue of use/closures of alley rights of ways would fall within the Code Compliance Review and Strategy Framework objective, all issues raised in the “Three Big Things” exercise fit within the draft Framework document and it was ready for formal review, deliberation and approval at the next regular Council meeting.

Council then discussed a number of current project details, along with general questions and answers on items of interest. A question was raised regarding local historic districts and how preservation related regulations are enforced. Hanks committed to providing follow up information to Council at a future meeting.

RETREAT ENDED at 2:40 PM

APPROVED by the City Council of the City of Coburg on this 9th day of April, 2024.

Nancy Bell, mayor of Coburg

ATTEST: _____
Sammy L. Egbert, City Recorder



MINUTES
City Council Work Session
March 5, 2024 at 6:00 PM
Coburg City Hall
91136 N Willamette Street

MEMBERS PRESENT: Nancy Bell; Mayor, John Fox, Cathy Engebretson, Claire Smith, John Lehmann

MEMBERS ABSENT: Alan Wells

STAFF PRESENT: Adam Hanks; City Administrator, Sammy Egbert; City Recorder, Brian Harmon; Public Works Director

RECORDED BY: Madison Balcom; Administrative Assistant

CALL TO ORDER

Mayor, Nancy Bell called the meeting to order at 6:05 pm.

ROLL CALL

City Recorder, Sammy Egbert called roll. A quorum was present.

WORK SESSION DISCUSSION

City Administrator, Adam Hanks began the discussion by explaining that the last time council reviewed and adopted the CIP was in 2022. He used the same policy document from 2022 as well, just changed some of the wording, for this meeting. Mr. Hanks explained the different pieces in the packet, and the difference in the included lists.

Mr. Hanks said that he and Public Works Director, Brian Harmon, went through the prior approved list and updated the time frames and estimates of the listed projects. Hanks explained that this was a more simplified breakdown of the projects, but they will need to go through and break it down further into more specific time frames and funds for each component of the projects.

Mr. Hanks explained that some projects are pulled from more than one fund. Some will only show remaining costs, not full costs, because of previous spending or progress on the project before that fiscal year. All others will have a total project cost. Several projects could be potentially grant funded, but are shown as full project costs to show cost estimates and for future reference.

Mr. Hanks explained that the plan is to go over this and answer questions about the projects, timeframes, and costs. Then the CIP will be brought to the Special Meeting on March 26th for adoption. Hanks said that this is a prudent schedule, but they may not have the financial means to keep up with that schedule.

Mr. Hanks mentioned that they switched this to a 6-year, rather than a 5-year CIP. He would like to have a conversation with council about bi-annual budgets, which would allow them to update the CIP every other year. Hanks explained that they prioritized these projects by the regulatory requirements, growth, infrastructure life, the project's long-term cost production, and funding opportunities. This provides a common road map of when and why these projects are happening.

Mr. Fox asked why the Collector Street Project has a larger cost. Mr. Harmon explained that the Collector Streets have to be designed and built as a collector, which is designed differently than other types of streets. The first phase is from N. Coleman to Mill St. down to Skinner St., which is a projected cost of \$750,000 for fiscal year 2028-29.

Mr. Hanks explained that the closer they get to the project, the tighter the estimated costs will get. Hanks also explains some of the difficulties with the building and engineering of the streets, taking into account the storm drainage systems, curb and gutter, sidewalks, street standards, and parking.

Ms. Smith asked if the curb and gutter will decrease the space between the street and houses. Mr. Hanks said it could and each option has its drawbacks. Mr. Harmon said that engineering for the local and collector streets without the curb, gutter and sidewalk is much more expensive than engineering for the curb, gutter and sidewalk because it's harder to design.

Mr. Fox asked if they would cut down trees for the robust collector streets and more modern infrastructure. Mr. Hanks said not necessarily, and they will try to avoid that as much as they can. Mr. Harmon said the struggle when they are designing streets is they have to look at each tree individually and assess its state, life cycle, future of the tree, etc. for design purposes.

Ms. Smith asked if there are any trees that are considered to be part of a rain garden system. Mr. Hanks said that is possible, but the engineers would much rather not have all those extra variables. Mr. Harmon said that it is easier to maintain curb and gutter.

Mr. Lehmann asked if the "Projects by Fiscal Year" cost of \$3,623,000 for FY 2024-25 are all funded. Mr. Hanks said no, but it is close. Mr. Lehmann then asked if the projects are prioritized. Mr. Harmon said that it is prioritized, there is just a lot there. A lot of the projects haven't been put out to bid, so they really don't know what the actual cost will be.

Ms. Smith asked if Coburg Loop Path #5 is still at Council's discretion. Mr. Hanks replied that almost all projects are still at council's discretion, but Loop Path #5 is still a ways out. They are not tied in to having to continue with that project if budget doesn't allow it. Parks are heavily in Council's control. They discussed some projects in the "Projects by Fiscal Year" for FY 2024-25 and Mr. Hanks explained and provided some details on them.

Mr. Lehmann asked if the Pioneer Valley Estates project for FY 2025-26, labeled "Federal Grant" of \$750,000, was just a hope or was in the works already. Mr. Hanks said he submitted something for it recently, but it is a Federal Earmark, which he had to submit multiple letters of support for.

Mr. Harmon said that if they do not receive that grant, that project could very well be pushed into FY 2026-27. Mr. Hanks said that some projects might have engineering and design done years before they get to the construction part. The construction could be deferred until they find a new funding stream. They further discussed the Pioneer Valley Estates project, the funding and cost possibilities of it, and the wanted input from citizens and making sure everyone understands the projects progress.

Ms. Engebretson asked if they are inviting the citizens to see some designs in advance for the collector street project on N Coleman. Mr. Harmon said that receiving input is great but they have to be careful and still follow the engineers design and basic regulations. Mr. Hanks said they have to distinguish between community awareness and input. It is also important for citizens to understand all the possibilities, along with the pros and cons for each of the choices, and visibly seeing the plans.

Mr. Hanks mentioned that they are also doing a water and wastewater capacity analysis with the money they have left in the water loan. He explained more on this project. Hanks mentioned that a lot of the sewer projects are in the 2030+ time range. With the water fund, Hanks explained that they will need to be looking at additional funding and each individual funds' debt ceiling.

Mr. Lehmann asked about the use of pesticides. Mr. Harmon said that both him and Mr. Hanks are against using pesticides as much as possible, to protect staff and citizens. Mr. Hanks mentioned that they are doing an application for a rare intern paid for through DLCD, and Megan Winner mentioned possibly using them to do some research and put together a pesticide policy for the city.

Mr. Hanks said that the only way to maintain the aesthetic in the parks is to have many volunteers constantly weeding in them. Ms. Smith mentioned the idea of planting some low-maintenance plants to help keep weeds down in areas. Mr. Harmon mentioned that they only spray in the area around Johnny Diamond Park between the fence and creek because they are struggling with poison oak. They do not spray in the parks, and are careful about where they applicate.

Mr. Hanks mentioned that they are going to be adding the category of "Equipment Fleet" to this plan.

ADDITIONAL COMMENTS

The first budget meeting will be late April/early May. Mr. Hanks said they got the audit back, which they met on and will hopefully get finalized soon.

ADJOURNMENT

Mayor Bell adjourned the meeting at 7:38 pm.

APPROVED by the City Council of the City of Coburg on this ____ day of _____, 2024.

Nancy Bell, mayor of Coburg

ATTEST: _____
Sammy L. Egbert, City Recorder



COBURG CITY COUNCIL ACTION ITEM

Public Contracting Ordinance and Resolutions

An Ordinance Repealing Ordinance A-91-C and Authorizing the Adoption of Public Contracting Rules and Spending Authority by Resolution via Resolutions 2024-02 and 2024-03

Meeting Date	Staff Contact	Email
April 9, 2024	Adam Hanks, City Administrator Sammy Egbert, City Recorder	Adam.Hanks@ci.coburg.or.us Sammy.Egbert@ci.coburg.or.us

REQUESTED COUNCIL ACTION

Staff, with contract legal service technical expertise and direction, is presenting for second reading an ordinance that repeals and replaces the City of Coburg’s existing public contracting rules currently set forth in Ordinance A-91c.

Suggested Motions

I move to adopt at second reading and by title only Ordinance A-255 An Ordinance Repealing Ordinance A-91-C and Authorizing the adoption of Public Contracting Rules and Spending Authority by Resolution.

AND

I move approval of Resolution 2024-02, a resolution of City Council and the Local Contract Review Board opting out of the Oregon Attorney General Model Public Contracting Rules and Amending Public Contracting Rules, with associated findings in support, for the City of Coburg

AND

I move approval of Resolution 2024-03 establishing purchasing authority and spending limits for City of Coburg staff

BACKGROUND

Public Contracting for goods and services, professional services and public improvements are regulated by Oregon Revised Statutes (ORS). Various aspects of public contracting rules are regularly amended by the Oregon State Legislature requiring diligence at the local jurisdiction level to ensure that all locally adopted public contracting regulations comply with all relevant ORS provision amendments.

Some provisions of the state public contracting regulations provide for local decision making

that is more stringent than state law. As state law is amended over time, local regulations need to be revised, repealed or otherwise made compliant with state law.

Staff, and legal counsel, is recommending some structural changes in how public contracting regulations are adopted at the local level. The current regulations are contained within Ordinance A-91-C entirely. In addition to a number of text changes proposed, staff is recommending that the regulations be separated between ordinance and resolution with the intention being that the overarching framework and “fixed” elements of public contracting be adopted via ordinance and the areas that most likely evolve with legislative amendments and local preferences be approved via resolution.

This results in the public contracting “framework” needing formal public hearing, multiple readings and expanded noticing as appropriate for significant regulatory changes. Items that fall more into the “fine tuning” and “business operations” category can be adjusted more efficiently and quickly through the resolution process.

This comprehensive updating of Coburg’s public contracting regulations was initiated by staff from two recent issues that arose. One related to bid award appeals language being inconsistent with state regulations, which made the appeal process difficult to navigate. Another relates to delegated spending authority, which staff is proposing be significantly adjusted upward for operational efficiency.

Council moved Ordinance A-255 to second reading at its March 12, 2024 meeting and also discussed both resolutions that were included in the packet for reference. Council specifically discussed its general preference and direction to staff regarding spending authority and indicated that the staff suggested \$75,000 maximum would be appropriate. Staff has incorporated that direction into the spending authority resolution (2024-03) that is now formally before the Council for final deliberation and decision.

RECOMMENDATION

Staff recommends approval by title only of Ordinance A-255 and also recommends approval of both Resolution 2024-02 and Resolution 2024-03 to complete the updating of the City of Coburg Public Contracting Rules and Regulations.

BUDGET / FINANCIAL IMPACT

Costs associated with adoption of the proposed ordinance authorizing public contracting rules and spending authority by resolution are limited to professional legal service fees currently appropriated in the Administration Department of the General Fund of approximately \$3,000.

PUBLIC INVOLVEMENT

The proposed Ordinance is available on the website and a printed copy is available at the front office as required by 2022 Coburg Charter. Council has previously discussed the ordinance and associated resolutions at its March 12, 2024 Council meeting.

NEXT STEPS

Upon approval of the complete public contracting regulations (ordinance and resolutions), staff will conduct an internal training and develop any beneficial documents to assist with efficient compliance with the new regulations.

ATTACHMENTS

1. Draft Ordinance A-255
2. Draft Resolution 2024-02 Opting out of the Attorney General Model Public Contracting Rules and amending local public contracting rules (with associated Exhibit A – Findings in Support of Adoption)
3. Draft Resolution 2024-03 Establishing Purchasing Authority and Spending Limits for City of Coburg staff.

ORDINANCE A-255

AN ORDINANCE REPEALING ORDINANCE NO. A-91-C AND AUTHORIZING THE ADOPTION OF PUBLIC CONTRACTING RULES AND STAFF SPENDING AUTHORITY BY RESOLUTION.

WHEREAS, in 2005, the City adopted Ordinance A-91C, establishing public contracting rules for the City of Coburg; and

WHEREAS, the Oregon legislature's most recent amendments to Oregon's Public Contracting Code went into effect on January 1, 2024; and

WHEREAS, ORS 279A.065(5)(b) requires the City to review all legislative changes to determine whether the City should modify its rules to ensure statutory compliance; and

WHEREAS, pursuant to its Charter authority and ORS 279A.065, the City Council has determined to repeal Ordinance No. A-91C, and replace it with authorization to adopt and update City public contracting rules and staff spending authorities by resolution, in order to facilitate future amendments.

THE CITY OF COBURG ORDAINS AS FOLLOWS:

Section 1. Public Contracting Policy.

- A. Short Title. The provisions of this Ordinance may be referred to as the City of Coburg's Public Contracting Regulations, and all rules adopted by resolution pursuant to this Ordinance may be cited as the City of Coburg's Public Contracting Rules.
- B. Purpose of Public Contracting Regulations. In adopting these Public Contracting Regulations, it is the City's policy to utilize public contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by: (1) Promoting impartial and open competition; (2) Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and (3) Taking full advantage of evolving procurement methods that suit the contracting needs of the City as they emerge within various industries.
- C. Interpretation of Public Contracting Rules. In furtherance of the purpose of the objectives set forth in subsection B, it is the City's intent that the City of Coburg Public Contracting Regulations and Rules be interpreted to authorize the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B and 279C.

Section 2. Public Contracting Rules.

The City Council may establish and amend City Public Contracting Rules by resolution.

Section 3. Public Contracts – Regulation by the City of Coburg.

Except as expressly delegated under this Ordinance or Rules adopted hereunder, the City of Coburg reserves to itself the exercise of all of the duties and authority of a contract review board and a contracting agency under state law, including, but not limited to, the power and authority to:

- A. Solicitation Methods Applicable to Contracts. Approve the use of one or more exemptions from solicitation methods for a specific contract or certain classes of contracts;
- B. Brand Name Specifications. Exempt the use of brand name specifications for public improvement contracts;
- C. Waive Performance and Payment Bonds. Approve the partial or complete waiver of the requirement for the delivery of a performance or payment bond for construction of a public improvement, other than in cases of emergencies;
- D. Electronic Advertisement of Public Improvement Contracts. Authorize the use of electronic advertisements for public improvement contracts in lieu of publication in a newspaper of general circulation;
- E. Appeals of Debarment and Prequalification Decisions. Hear properly filed appeals of the purchasing manager’s determination of debarment, or concerning prequalification;
- F. Award. Award all contracts that exceed the authority of the purchasing manager; and
- G. Delegation. Delegate to any employee or agent of the City any of the duties or authority of a contracting agency.

Section 4. Public Contracts - Authority of City Administrator.

- A. General Authority. The city administrator shall be the purchasing manager for the City, subject to Council spending authority delegated to the city administrator and other staff, as set by Council resolution. Subject to the provisions of this Ordinance, the purchasing manager may create and amend all solicitation materials, contracts, and forms required or permitted under the Oregon Public Contracting Code and any City Public Contracting Rules adopted in conformance with Section 2 of this Ordinance. The purchasing manager shall hear all solicitation and award protests.
- B. Solicitation Preferences. When possible, the purchasing manager shall use solicitation documents and evaluation criteria that:
 - (1) Give preference to goods and services that have been manufactured or produced in the State of Oregon if price, fitness, availability and quality are otherwise equal; and
 - (2) Give preference to goods that are certified to be made from recycled products when such goods are available, can be substituted for non-recycled products without a loss in quality, and the cost of goods made from recycled products is not significantly more than the cost of goods made from non-recycled products.

- C. Delegation of Purchasing Manager’s Authority. Any of the responsibilities or authorities of the purchasing manager under this Ordinance may be delegated and sub-delegated by written directive.
- D. Mandatory Review of Rules. Whenever the Oregon State Legislative Assembly enacts laws that cause the attorney general to modify its Model Rules, the Purchasing Manager or Purchasing Manager’s designee shall review the City’s duly adopted Public Contracting Rules and recommend to the Council any amendments required to ensure compliance with statutory changes.

Section 5. Severability. In the event any section or subsection of this Ordinance is finally adjudged to be legally unenforceable, then such judgment shall only invalidate that section or subsection, and all remaining sections and subsections shall remain in full legal force and effect.

Section 6. Repeal. Ordinance A-91-C , enacted March 1, 2005, and all other previously adopted ordinances, resolutions and enactments establishing public contracting rules or procedures for public contracts for the City of Coburg are hereby repealed.

First Reading on March 12, 2024, by title only. Second Reading on April 9, 2024, by title only. After public notice and hearing, and upon councilor motion and second, this Ordinance was put to a vote, the results of which were:

ADOPTED by the **City Council** of the **City of Coburg** this ___ day of _____, 2024.

APPROVED by the Mayor of the City of Coburg this ___ day of _____, 2024.

Nancy Bell, Mayor

ATTEST: _____
Sammy L. Egbert, City Recorder

RESOLUTION 2024-02

A RESOLUTION OF THE CITY OF COBURG AND LOCAL CONTRACT REVIEW BOARD OPTING OUT OF THE ATTORNEY GENERAL’S MODEL PUBLIC CONTRACTING RULES AND AMENDING PUBLIC CONTRACTING RULES FOR THE CITY OF COBURG

WHEREAS, it is the policy of the City of Coburg (City) that a sound and responsive public contracting system should allow impartial, meaningful, and open competition, preserving formal competitive selection as the standard for public contracts unless otherwise specifically exempted herein, by state law, or by subsequent ordinance or resolutions; and

WHEREAS, the Oregon Legislature adopted HB 2341 (2003 Oregon Laws, Chapter 794), which was signed by the Governor with an operative date of March 1, 2005. This Act repealed Oregon Revised Statutes (“ORS”) Chapter 279 (with minor exceptions) and replaced it with three new subchapters: ORS 279A, 279B, and 279C. These three subchapters, together, constitute the Public Contracting Code (or Code). Any City rules and exemptions previously adopted under ORS Chapter 279 expired on March 1, 2005; and

WHEREAS, absent any action by the Local Contract Review Board on or after March 1, 2005, the City has operated under the Public Contracting Model Rules adopted by the Attorney General under ORS subchapters 279A, 279B, and 279C, as set forth in Oregon Administrative Rules Chapter 137, Divisions 46, 47, 48 and 49 (the “Model Rules”); and

WHEREAS, in order to adopt new public contracting rules that differ from the Model Rules, under ORS 279A.065(5), the City Council must specifically state that the Model Rules adopted by the Attorney General do not apply to City and prescribe its own public contracting rules, which may include portions of the Attorney General’s Model Rules. The Local Contract Review Board may also adopt rules for public contracting not covered by the Model Rules, as long as they do not conflict with the Public Contracting Code; and

WHEREAS, the Public Contracting Code divides powers and duties for contracting into two categories: those that must be performed by the “Local Contract Review Board”; and those that must be performed by the “Contracting Agency”; and

WHEREAS, pursuant to ORS 279A.060, the City Council is the Local Contract Review Board for City and, as such, is authorized to act on all such matters on behalf of the City, adopt Public Contracting Rules, and establish procedures for amendment of such rules; and

WHEREAS, the Local Contract Review Board may designate certain personal service contracts or classes of service contracts as personal service contracts, which are not subject to the procedural requirements of the Public Contracting Code or the Model Rules; and

WHEREAS, City recognizes it may exempt certain public improvement contracts or classes of such contracts under ORS 279C.335; and

WHEREAS, the City Council additionally requests that the City's Local Contract Review Board approve the classes of special procurements set forth in the attached rules, based upon the findings set forth in Exhibit A to this Resolution.

NOW, THEREFORE, the City of Coburg resolves as follows:

Section 1. The City Council (Council) is hereby designated to continue as the Local Contract Review Board of the City and shall have all of the rights, powers and authority necessary to carry out the provisions of Chapters 279A, 279B, and 279C (the "Public Contracting Code") and attached Rules. Except as otherwise provided in this Resolution, the definitions established in the attached Rules apply herein. The term "Contracting Agency" as used in the attached Rules includes Contracting Agency's chief administrative officer, his or her designee, or any other purchasing agent designated by City policy. Those individuals are hereby designated as City's Contracting Agency and may exercise all authorities, powers and duties granted to a Contracting Agency under the Public Contracting Code and attached Rules, unless otherwise established by City policy.

Section 2. The above recitals and Exhibit A are hereby adopted by the Council, sitting as the Local Contract Review Board, as findings of fact supporting approval of the Council's request for classes of special procurement and public improvement contract exemptions.

Section 3. The Model Rules adopted by the Attorney General pursuant to ORS 279A.065, including any implementing Oregon public contracting amendments from the 2023 legislative session, do not and will not apply to City. Instead, the City hereby prescribes the following Rules, which include portions of the Attorney General's Model Rules, as the Rules of Procedure that the City will use for its public contracting: Public Contracting Rules Chapter 137, Divisions 46, 47, 48 and 49. While the numbering of these Rules reflects the numbering system of the Attorney General's Model Rules, they incorporate City changes to the Model Rules, and, therefore, are not the Attorney General's promulgated administrative rules. City exemptions are also set forth in these Rules, as numbered Exemptions 1 through 18 (E-1 through E-18). All above-referenced Rules are attached to this Resolution as Exhibit B, and incorporated herein by this reference.

Section 4. In accordance with ORS 279A.065(6)(b), the City shall review its Public Contracting Rules, adopted herein, each time the Attorney General modifies its Model Rules in order to determine whether amendments are required to ensure statutory compliance.

Section 5. Amendments to these Rules and new rules shall be adopted in accordance with this Resolution and the Public Contracting Code. Special procurement requests and approvals shall be made in accordance with Division 47 of the attached Rules and ORS 279B.085. Public improvement contract exemption procedures, including notice and public hearing

requirements, shall be made in accordance with Division 49 of the attached Rules and ORS 279C.335.

Section 6. The Model Cost Accounting Guidelines developed by the Oregon Department of Administrative Services pursuant to Section 3, Chapter 869, Oregon Laws 1979 are hereby adopted as the City’s Cost Accounting System to apply to public improvement projects exceeding \$5,000 and constructed with City’s own equipment or personnel. ORS 279C.310. For such public improvement projects estimated to cost more than \$200,000, or for certain road maintenance projects exceeding \$125,000, City shall also comply with the requirements of ORS 279C.305.

Section 7. All previously adopted resolutions establishing public contracting rules for City are hereby repealed.

Section 8. Effective Date. This Resolution shall take effect upon the effective date of Ordinance A-255.

APPROVED by the Coburg City Council this 9th day of April, 2024.

Nancy Bell, Mayor
City Council

Nancy Bell, Mayor, as President,
for the Local Contract Review Board

ATTEST:

ATTEST:

Sammy Egbert, City Recorder

Sammy Egbert, City Recorder
as Secretary for the
Local Contract Review Board

EXHIBIT A

**FINDINGS IN SUPPORT OF RESOLUTION NO. 2024-02
ADOPTING PUBLIC CONTRACTING CODE RULES**

ORS 279B.085 and 279C.335 authorize City of Coburg’s (City) Council, sitting as City’s Local Contract Review Board, to approve findings submitted and exemptions requested by City’s Council upon adoption of appropriate findings, to establish special selection, evaluation and award procedures for, or exempt from competition, the award of a specific contract or classes of contracts.

Pursuant to that authority, the Council makes the following findings in support of Resolution No. 2024-02, which establishes exempt classes of contracts and the solicitation methods for their award:

No Findings Required

Pursuant to ORS 279A.025 and 279A.055, the Council is not required to adopt findings with respect to the solicitation methods and awards of the following classes of contracts identified in City’s Public Contracting Rules 2023, Class Exemptions:

- E-4 Contracts for Price Regulated Items
- E-6 Investment Contracts
- E-12 Insurance, Employee Benefit
- E-17 Personal Service Contracts
- E-18 Liability Insurance Contracts

The above Rules govern subjects specifically authorized by state law and, therefore, require no local exemption.

Specific Findings for Public Improvement Class Exemption

The Council approves the following specific findings for the use of a Request for Proposal alternative contracting method for public improvement contracts estimated to cost over \$100,000 and also finds that the establishment of this class of contracts and the method approved for their award:

1. Is unlikely to encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and
2. The awarding of public improvement contracts under each exemption will result in substantial cost savings to City.

These conclusions are based on the following general findings:

- A. Operational, budget, and financial data. Where various criteria, which may or may not include cost, must be weighed in order to select an appropriate contractor for the desired project, the formal competitive bidding process costs of up to \$7,000 are a significant budgetary waste in that the most qualified contractor for the project may not be the lowest responsible bidder;
- B. Public benefits. Exempting contracts from competitive bidding requirements and instead utilizing statutory competitive proposal procedures will protect and preserve public funds, enable greater competition between the most qualified contractors, and result in a better product which meets the public's and City's needs;
- C. Value engineering, Specialized expertise required, Technical complexity. Only through a competitive proposal process can City weigh, evaluate and select the type of expertise needed to address the technical complexities of a particular public improvement project. Competitive proposals allow the City to determine which contractor may best provide such services. These are qualities not reflected in cost, where a determination on cost alone could forfeit these valuable and essential attributes;
- D. Public safety. Utilizing a competitive proposal process as opposed to competitive bidding can ensure high quality, more safely constructed facilities through the construction period, and after completion. Capitalizing upon design and construction planning and compatibility can also allow earlier use of public facilities even while construction continues;
- E. Market conditions. The increased availability of and need for technical expertise, value engineering, or other types of specialized expertise, as well as a need to investigate the compatibility, experience and availability of contractors require that certain public improvement contracts be awarded based upon an evaluation of a number of criteria, rather than simply cost.

Specific Findings for Special Classes and Methods of Award for Contracts Other Than Public Improvements.

The Council approves the specific findings for the establishment of special solicitation methods for the classes of public contracts described below and also finds that the establishment of each class of contracts and methods approved for their award:

- 1. Is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts because such exemptions still require alternative contracting procedures, ensuring: (1) reasonable competition; (2) the best contract price for the public; and (3) a cost-effective process for both contractors and City;

2. The awarding of public contracts under these exemptions will result in substantial cost savings to City because City will avoid costs associated with unnecessary documentation and procedures, where it is unmerited by the type and/or relatively low cost of the contracts; and
3. The awarding of public contracts pursuant to any of the requested exemptions substantially promotes the public interest in a manner that could not practicably be realized by formal competitive solicitation procedures, given the fact that such exemptions facilitate smooth operation of City's administration and operations, include procedures and mechanisms to ensure the best product, service or outcome is obtained at the least cost to the public and City, and identified classes address areas of public contracting left unresolved by state statute which are essential for City's operations, such as awarding personal service contracts, purchasing used personal property, and disposing of surplus personal property.

Specifically, the Council finds:

E-2 – Advertising Contracts.

Alternate Award Process. In City's discretion. The process selected may be competitive or non-competitive.

Cost Savings and Other Benefits. Size of and frequency of average advertisement (including all notices required to be published by City) does not justify the cost of solicitation. Period of time from recognition of need to advertise until advertising date is too short to issue solicitation.

Effect on Competition. The potential market is limited because not all advertisers work in every market. Choice of advertising medium is somewhat price sensitive, but primarily driven by location and size of circulation in comparison with City's target audience.

No Favoritism. Not applicable due to the lack of competitors and specialized contracting needs.

E-3 – Equipment Repair and Overhaul.

Alternate Award Process. As needed, in City's discretion.

Cost Savings and Other Benefits.

1. Pre-contract pricing is difficult to obtain and cannot be relied upon.
2. City has discretion to decide whether costs of solicitation are justified in relationship to size of contract and availability of skilled technicians to repair the specific equipment.
3. Delay required for solicitation would impair City's ability to respond to equipment breakdown and be injurious to the public interest.

4. Experience with contractor is crucial because reliability over the course of several projects is important.

Effect on Competition. Allows contractor to be selected based on ability to provide accurate, reliable and fast service.

Effect on Favoritism. Favoritism will not be greater than if statutory request for proposals process is used.

E-5 - Copyrighted Materials.

Alternate Award Process. As needed, in City's discretion.

Cost Savings and Other Benefits. Necessary to allow City to acquire special needs products that are unique.

Effect on Competition. None. There is no competitive market for a unique product. Copyrighted materials are generally acquired from a sole-source copyright holder, as used property, or by donation.

No Favoritism. Not applicable due to the lack of competitors and specialized contracting needs.

E-7 – Requirements Contracts.

Alternate Award Process. Original contract must be based on a competitive process.

Cost Savings and Other Benefits. Size and frequency of procurements does not justify the cost of solicitation. Period of time from recognition of need until good or service required too short to issue solicitation.

Effect on Competition. Minimal, due to underlying competitive process and requirement to renew contract via formal solicitation at least every five years.

Effect on Favoritism. Minimal, due to underlying competitive process and requirement to renew contract via formal solicitation at least every five years.

E-8 – Office Copier Purchases.

Alternate Award Process. Original contract must be based on a competitive process.

Cost Savings and Other Benefits. Size and frequency of procurements does not justify the cost of solicitation. Period of time from recognition of need until good or service required too short to issue solicitation.

Effect on Competition. Minimal, due to underlying competitive process and requirement to renew contract via formal solicitation at least every five years. In addition, rule requires evaluation and award based upon multiple factors, not just cost.

Effect on Favoritism. Minimal, due to underlying competitive process and requirement to renew contract via formal solicitation at least every five years. In addition, rule requires evaluation and award based upon set factors, in addition to cost.

Other Factors. Allows Contracting Agency to address emergency circumstances. Cannot anticipate when immediate replacement or repairs will be needed to ensure normal operations.

E-9 - Manufacturer Direct Supplies.

Alternate Award Process. Subject to cost saving analysis.

Cost Savings and Other Benefits. Allowed only after a formal solicitation is completed and manufacturer's price is less than offers received. Cost of formal solicitation, therefore not merited.

Effect on Competition. None. Allowed only after assessment of manufacturer's costs to distributor within the same pool of potential contractors that would be qualified to respond to an invitation to bid.

Effect on Favoritism. None. Allowed only after assessment of manufacturer's costs to distributor within the same pool of potential contractors that would be qualified to respond to an invitation to bid.

Other Factors. Allowed on a contract-by-contract basis and shall not result in an ongoing price agreement, further fostering competition.

E-10 – Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt.

Alternate Award Process. Intermediate procurement process.

Cost Savings and Other Benefits. Frequency and amount of exempt item purchases do not justify the cost of solicitation. Period of time from recognition of need through contract award too long for needed purchases of exempt fungible goods.

Effect on Competition. Minimal. Intermediate procurement process surveys market and ensures level of competition appropriate for these frequently purchased goods.

Effect on Favoritism. Purchase based on cost. Intermediate procurement process sufficiently avoids any favoritism.

E-11 – Hazardous Material Removal; Oil Cleanup.

Alternate Award Process. Rule encourages competitive procedures to the extent reasonable under the circumstances.

Cost Savings and Other Benefits. Avoids unnecessary cost and delay associated with procurement procedures when most qualified available contractor required for immediate performance. Primary consideration is public safety and compliance with hazardous material laws.

Effect on Competition. Minimal, given competitive procedures encouraged by Rule and supporting findings describing circumstance requiring clean up.

Effect on Favoritism. Minimal, given competitive procedures encouraged by Rule and supporting findings describing circumstance requiring clean up.

Other Factors. Exemption necessary to ensure City’s ability to comply with State law governing hazardous materials.

E-13 – Medical and Laboratory Supplies.

Alternate Award Process. Direct award to different vendors allowed, following initial competitive solicitation process.

Cost Savings and Other Benefits. Frequency and amount of exempt item purchases do not justify the cost of solicitation. Period of time from recognition of need through contract award too long for needed purchases of exempt fungible goods.

Effect on Competition. Minimal. Intermediate procurement process surveys market and ensures level of competition appropriate for these frequently purchased goods.

Effect on Favoritism. Purchase based on cost. Intermediate procurement process sufficiently avoids any favoritism.

E-14 – Concession Agreements.

Alternate Award Process. When in City’s best interest, a competitive proposal solicitation will be used.

Cost Savings and Other Benefits. Allows City to take advantage of unique revenue opportunities.

Effect on Competition. Responds to unique opportunities for which the number of competitors may range from none to many.

Effect on Favoritism. No impact. Responds to unique opportunities.

Other Factors. Not a contract for the acquisition or disposal of goods, or services or public improvements. Most similar to personal services contract because the quality of the concession may be more important than price factors. Variation in types and sizes of concession opportunities is too great to provide a single method of solicitation. Statutory public contracting requirements may not apply. May not be a public contract. Most similar to personal services contract. Findings may not be required.

E-15 – Used Personal Property, Purchase of.

Alternate Award Process. Rule requires individualized ORS 279B.085 findings and an intermediate procurement process, where feasible.

Cost Savings and Other Benefits. Allows City to take advantage of unique opportunity to acquire needed goods and services for discounted prices.

Effect on Competition. No impact. Responds to unique opportunities.

Effect on Favoritism. No impact. Responds to unique opportunities.

E-16 – Surplus Personal Property, Disposition of.

Alternate Award Process. Any means in City's best interest, after making individualized ORS 279B.085 findings. Items with a residual value of more than \$10,000 require Local Contract Review Board prior authorization.

Cost Savings and Other Benefits.

1. Avoids unnecessary solicitation expense by allowing City to determine whether cost of solicitation is justified by value of surplus property.
2. Allows City to establish programs for donation to charitable organizations.

Effect on Competition. No impact. Responds to unique opportunities.

Effect on Favoritism. No impact. Responds to unique opportunities.

Other Factors. Variations in the type, quantity, quality and opportunities for recycling of surplus property are too large to have this class of contracts governed by a single solicitation method.

PUBLIC CONTRACTING RULES

2023

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PUBLIC CONTRACTING RULES 2023

DIVISION 46

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

137-046-0100

Application; Federal Law Supremacy

(1) These Public Contracting Rules (Rules) set forth the rules of procedure for Public Contracting of Contracting Agencies subject to these Rules. These 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 through ORS 279C.870, and notwithstanding ORS chapters 279A, 279B, and ORS 279C.005 through 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 through 279C.670 or these rules, or require additional conditions in Public Contracts not authorized by ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670 or these Rules.

(4) These division 46 rules become effective upon adoption, and apply to Public Contracts first advertised, but if not advertised then entered into, on or after that date.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.030 & ORS 279A.065

137-046-0110

Definitions for the Rules

Unless the context of a specifically applicable definition in the Code requires otherwise, capitalized terms used in the Rules will have the meaning set forth in the division of the Rules in which they appear, and if not defined there, the meaning set forth in these division 46 rules, and if not defined there, the meaning set forth in the Code. The following terms, when capitalized in these Rules, shall have the meaning set forth below:

- (1) **“Addendum”** or **“Addenda”** means an addition or deletion to, a material change in, or general interest explanation of a Solicitation Document.
- (2) **“Award”** means, as the context requires, either the act or occurrence of the Contracting Agency’s identification of the Person with whom the Contracting Agency will enter into a Contract following the resolution of any protest of the Contracting Agency’s selection of that Person, and the completion of all Contract negotiations.
- (3) **“Bid”** means a written response to an Invitation to Bid.
- (4) **“Closing”** means the date and time announced in a Solicitation Document as the deadline for submitting Offers.
- (5) **“Code”** means the Public Contracting Code, as defined in ORS 279A.010.
- (6) **“Competitive Range”** means the Proposers with whom the Contracting Agency will conduct discussions or negotiations if the Contracting Agency intends to conduct discussions or negotiations in accordance with Rules 137-047-0262 or 137-049-0650.
- (7) **“Contract”** means a contract for sale or other disposal, or a purchase, lease, or other acquisition, by a Contracting Agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. “Contract” does not include grants.
- (8) **“Contract Price”** means, as the context requires, the maximum monetary obligation that a Contracting Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.
- (9) **“Contracting Agency”** means a public body authorized by law to conduct a procurement. “Contracting Agency” includes any person authorized by a Contracting Agency to conduct procurements on the Contracting Agency’s behalf.
- (10) **“Contract Review Authority”** means the Local Contracting Agency’s Local Contract Review Board determined as set forth in ORS 279A.060.

- (11) **“Contractor”** means the Person with whom a Contracting Agency enters into a Contract.
- (12) **“DBE Disqualification”** means a disqualification, suspension or debarment pursuant to ORS 200.065, 200.075 or 279A.110.
- (13) **“Descriptive Literature”** means the Offeror's materials submitted to provide information concerning the products or services available in response to a Solicitation Document.
- (14) **“Electronic Advertisement”** means notice of a Contracting Agency's request for Offers, request for quotes, request for information or other document inviting participation in the Contracting Agency's Procurements available over the Internet via (a) the World Wide Web or some other Internet protocol; or (b) a Contracting Agency's Electronic Procurement System. An Electronic Advertisement may include a Solicitation Document.
- (15) **“Electronic Offer”** means a response to a Contracting Agency's request for Offers or request for quotes submitted to a Contracting Agency via email or through the Contracting Agency's Electronic Procurement System.
- (16) **“Electronic Procurement System”** means an information system that Persons may access through the Internet, using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer, that enables a Contracting Agency to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a Procurement.
- (17) **“Goods and Services”** or **“Goods or Services”** has the meaning set forth in ORS 279A.010(1)(j).
- (18) **“Invitation to Bid”** or **“ITB”** means all documents used for soliciting Bids in accordance with either ORS 279B.055, or 279C.335.
- (19) **“Offer”** means a written response to a Solicitation Document.
- (20) **“Offeror”** means a Person who submits an Offer.
- (21) **“Opening”** means the date, time and place announced in the Solicitation Document for the public opening of Written sealed Offers.
- (22) **“Person”** means 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 that has the legal capacity to enter into a contract.
- (23) **“Personal Services”** means the services or type of services performed under a Personal Services Contract.
- (24) **“Personal Services Contract”** or **“Contract for Personal Services”** means a contract primarily for the provision of services that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of architects, engineers, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers, unless specifically exempt from the Code. For any single contract or class of contracts, the Contracting Agency shall have the discretion to determine whether additional types of services not specifically mentioned in this definition are personal services.
- (25) **“Product Sample”** means 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.
- (26) **“Proposal”** means a written response to a Request for Proposals.
- (27) **“Request for Proposals”** or **“RFP”** means all documents used for soliciting Proposals in accordance with ORS.279B.060, 279C.110 or Rule 137-049-0650.
- (28) **“Responsible Offeror”** (also, **“Responsible Bidder”** or **“Responsible Proposer,”** as applicable) means a Person that has submitted an Offer and meets the standards set forth in Rules 137-047-0640 or 137-049-0390(2), and that has not been debarred or disqualified by the Contracting Agency under Rules 137-047-0575 or 137-049-0370. When used alone, **“Responsible”** means meeting the aforementioned standards.
- (29) **“Responsive Offer”** (also, **“Responsive Bid”** or **“Responsive Proposal,”** as applicable) means an Offer that substantially complies in all material respects with applicable solicitation requirements. When used alone, **“Responsive”** means having the characteristic of substantially complying in all material respects with applicable solicitation requirements.
- (30) **“Signed”** or **“Signature”** means 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.
- (31) **“Solicitation Document”** means an Invitation to Bid, Request for Proposals or other document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or ORS Chapter 279C.
- (32) **“Specification”** means 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 a 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.

(33) **“Work”** means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a Contract and successful completion of all duties and obligations imposed by the Contract.

(34) **“Written”** or **“Writing”** means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-046-0120

Policy

Contracting Agencies subject to the Code shall conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and in these Rules.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.015 & ORS 279A.065

137-046-0130

Application of the Code and Rules; Exceptions

(1) Except as set forth in this section, a Contracting Agency shall exercise all rights, powers and authority related to Public Contracting in accordance with the Code and these Rules.

(2) Neither the Code nor these Rules apply to the contracts or the classes of contracts described in ORS 279A.025(2).

(3) Contracting Agencies otherwise subject to the Code and these Rules may enter into Public Contracts under a federal program pursuant to ORS 279A.180 without following the procedures set forth in ORS 279B.050 through ORS 279B.085.

(4) Contracting Agencies otherwise subject to the Code and these Rules may enter into contracts for Goods or Services with non-profit agencies providing employment opportunities for disabled individuals pursuant to ORS 279.835 through 279.855 without following the source selection procedures set forth in either ORS 279A.200 through ORS 279A.225, or ORS 279B.050 through ORS 279B.085. However, Contracting Agencies must enter into such contracts in accordance with any applicable administrative rules promulgated by the Department of Administrative Services.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.050, ORS 279A.055, ORS 279A.065 & ORS 279A.180

MINORITIES, WOMEN AND EMERGING SMALL BUSINESSES

137-046-0200

Affirmative Action; Limited Competition Permitted

(1) Pursuant to ORS 279A.100, a Contracting Agency may limit competition on Public Contracts for Goods and Services, or on other Public Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies, in accordance with policies and procedures established by the Public Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.100

137-046-0210

Subcontracting to and Contracting with Emerging Small Businesses; DBE Disqualification

(1) As set forth in ORS 279A.105, a Contracting Agency 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 Contracting Agency 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 Contracting Agency shall determine in each particular instance what proportion of a contractor's subcontractor's employees or subcontractors constitute a substantial number.

(3) Contracting Agencies shall include in each Solicitation Document a requirement that Offerors certify in their Offers in a form prescribed by the Contracting Agency, that the Offeror has not discriminated and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is certified under ORS 200.055 as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, an emerging small business, or a business that a veteran, as defined in ORS 200.005, owns.

(4) DBE Disqualification.

(a) A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's 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) The Contracting Agency shall provide Written notice to the Person of a proposed Disqualification. The Contracting Agency shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. This notice shall:

(A) State that the Contracting Agency intends to disqualify or suspend the Person;

(B) Set forth the reasons for the DBE 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 Contracting Agency 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 of the authority and jurisdiction under which the hearing will be held;

(E) Include a reference to the particular sections of the statutes and rules involved;

(F) State the proposed DBE Disqualification period; and

(G) State that the Person may be represented by legal counsel.

(c) Hearing. The Contracting Agency shall schedule a hearing upon the Contracting Agency's receipt of the Person's timely request. The Contracting Agency 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.

(d) Notice of Disqualification. The Contracting Agency shall provide Written notice of the Disqualification to the Person. The Contracting Agency shall deliver the Written notice by personal service, or by registered or certified mail, return receipt requested. The notice shall contain:

(A) The effective date and period of DBE Disqualification;

(B) The grounds for DBE Disqualification; and

(C) A statement of the Person's appeal rights and applicable appeal deadlines.

(5) **Contract and Subcontract Conditions**. If a Contracting Agency awards a Contract to an Offeror that has been determined to be responsible under ORS 200.005(8) and 200.045(3), or awards a Contract under ORS 279A.100:

(a) The Contracting Agency must provide, as a material condition of the Contract:

(A) That the Contractor must maintain its certification under ORS 200.055 throughout the term of the Contract and any extensions (if the Contracting Agency used the certification as a factor in or as a basis for the Award of the Contract);

(B) That the Contractor must promptly pay each subcontractor that is certified under ORS 200.055 in accordance with ORS 279B.220, or 279C.570 and ORS 279C.580, whichever apply to the Contract;

(C) That the Contractor must include, in any subcontract the Contractor establishes in connection with the Contract, a provision that requires the subcontractor to maintain the subcontractor's certification under ORS 200.055 throughout the term of the subcontract and any extensions (if the Contractor used the certification as a factor in or as a basis for the Award of the subcontract);

(D) That the Contracting Agency may require the Contractor to terminate a subcontract with a subcontractor that fails to maintain its certification under ORS 200.055 throughout the term of the subcontract and any extensions.

(b) In the administration of Contracts that are subject to section (5) of this rule, the Contracting Agency must verify the Contractor's and any subcontractor's compliance with subsection (5)(a) of this rule.

(c) Subparagraph (5)(a)(A) of this section does not apply to an emerging small business that ceases to qualify as a tier one firm or a tier two firm (as ORS 200.005 defines those terms) due to the growth in the business's number of full-time equivalent employees or in average annual gross receipts during the term of the Contract. This section (5) does not apply to an emerging small business for which a certification under ORS 200.055 expires during the term of the Contract or any extensions.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 200.065, ORS 200.075, ORS 279A.065, ORS 279A.105, ORS 279A.107 & ORS 279A.110

CONTRACT PREFERENCES

137-046-0300

Preference for Oregon Goods and Services; Nonresident Bidders

(1) **Award When Offers Identical.** When a Contracting Agency receives Offers identical in price, fitness, availability and quality, and chooses to award a Contract, the Contracting Agency shall award the Contract based on the following order of precedence:

- (a) The Agency shall award the Contract to the Offeror among those submitting identical offers that is offering Goods or Services or Personal Services that have been manufactured or produced in Oregon.
- (b) If two or more Offerors submit identical Offers, and both offer Goods or Services or Personal Services manufactured or produced in Oregon, the Contracting Agency shall award the Contract by drawing lots among the identical Offers offering Goods or Services or Personal 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 Contracting Agency receives identical Offers, and none of the identical Offers offer Goods or Services or Personal Services manufactured or produced in Oregon, then the Contracting Agency 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 Contracting Agency 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 or Personal 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 Contracting Agency determines, in writing, that two or more Proposals are equally advantageous to the Contracting Agency.
- (d) Offers received in response to an intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the Contracting Agency in accordance with ORS 279B.070(4).

(3) **Determining if Goods or Services or Personal Services are Manufactured or Produced in Oregon.**

For the purposes of complying with section 1 of this Rule, Contracting Agencies may request, either in a Solicitation Document, following Closing, or at any other time determined appropriate by the Contracting Agency, any information the Contracting Agency determines is appropriate and necessary to allow the Contracting Agency to determine if the Goods or Services or Personal Services are manufactured or produced in Oregon. A Contracting Agency may use any reasonable criteria to determine if Goods or Services or Personal Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the Contracting Agency 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 Contracting Agency 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) **Discretionary Preference and Award.**

(a) Under ORS 279A.128, a Contracting Agency may provide, in a Solicitation Document for Goods, Services or Personal Services, a specified percentage preference of not more than: (i) ten percent for

Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon; or (ii) five percent for Goods or Services provided by a benefit company that is incorporated, organized, formed or created under ORS 60.754, that submits with a bid or proposal a certificate of existence issued under ORS 60.027 and has the majority of the benefit company's regular, full-time workforce located in Oregon at the time the benefit company submits the bid or proposal.

(b) When the Contracting Agency provides for a preference under this Section, and more than one Offeror qualifies for the preference, the Contracting Agency may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon.

(c) A Contracting Agency may establish a preference percentage higher than the percentages authorized in (5)(a) of this Rule by written order that finds good cause to establish the higher percentage and which explains the Contracting Agency's reasons and evidence for finding good cause to establish a higher percentage and which explains the Contracting Agency's reasons and evidence for finding good cause to establish a higher percentage.

(d) The Contracting Agency may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 297C.320.

Stat. Auth.: ORS 279A.065 & ORS 279A.128

Stats. Implemented: ORS 279A.065, ORS 279A.120 & ORS 279A.128

137-046-0310

Reciprocal Preferences

(1) When evaluating Bids pursuant to Rules 137-047-0255, 137-047-0257 or 137-049-0390, Contracting Agencies 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 Contracting Agency may rely on the list prepared and maintained by the Department of Administrative Services 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

137-046-0320

Preference for Recycled Materials

(1) In comparing goods from two or more Offerors, if at least one Offeror offers goods manufactured from recycled materials, and at least one Offeror does not, a Contracting Agency shall select the Offeror offering goods manufactured from recycled materials if each of the conditions specified in ORS 279A.125(2) exists. When making the determination under ORS 279A.125(2)(d), the Contracting Agency shall consider the costs of the goods following any adjustments the Contracting Agency makes to the price of the goods after evaluation pursuant to Rule 137-046-0310.

(2) For the purposes of this Section, a Contracting Agency shall determine if goods are manufactured from recycled materials in accordance with standards established by the Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.125

COOPERATIVE PROCUREMENT

137-046-0400

Authority for Cooperative Procurements

(1) Contracting Agencies may participate in, sponsor, conduct or administer Joint Cooperative Procurements, Permissive Cooperative Procurements and Interstate Cooperative Procurements in accordance with ORS 279A.200 through 279A.225.

(2) Each Purchasing Contracting Agency shall determine, in Writing, whether the solicitation and award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, ORS 279B.060 or ORS 279B.085 consistent with ORS 279A.200(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.205

137-046-0410**Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies**

(1) If a Contracting Agency is an Administering Contracting Agency of a Cooperative Procurement, the Contracting Agency may establish the conditions under which Persons may participate in the Cooperative Procurements administered by the Administering Contracting Agency. Such conditions may include, without limitation, whether each Person that participates in the Cooperative Procurement must pay administrative fees to the Administering Contracting Agency, whether the participants must enter into a written agreement with the Administering Contracting Agency, or any other matters related to the administration of the Cooperative Procurement and the resulting Original Contract. A Contracting Agency that acts as an Administering Contracting 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 Purchasing Contracting Agencies' compliance with the Code or these Rules.

(2) If a Contracting Agency, acting as a Purchasing Contracting Agency, enters into a Contract or Price Agreement based on a Cooperative Procurement, the Contracting Agency shall comply with the Code and these Rules, including without limitation those sections of the Code and these Rules that govern:

- (a) The extent to which the Purchasing Contracting Agency may participate in the Cooperative Procurement,
- (b) The advertisement of the solicitation document related to the Cooperative Procurement, and
- (c) Public notice of the Purchasing Contracting Agency's intent to establish Contracts or Price Agreements based on a Cooperative Procurement.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.205

137-046-0420**Joint Cooperative Procurements**

A Contracting Agency that chooses to participate in, sponsor, conduct or administer a Joint Cooperative Procurement may do so only in accordance with ORS 279A.210.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.210

137-046-0430**Permissive Cooperative Procurements**

A Contracting Agency that chooses to participate in, sponsor, conduct or administer a Permissive Cooperative Procurement may do so only in accordance with ORS 279A.215.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.215

137-046-0440**Advertisements of Intent to Establish Contracts or Price Agreements through a Permissive Cooperative Procurement**

(1) A Purchasing Contracting Agency that wishes to enter into a Contract or Price Agreement arising out of a Permissive Cooperative Procurement must publish notice of its intent to do so if the Purchasing Contracting Agency estimates that it will spend in excess of \$250,000 on Goods and Services or Personal Services acquired under the Contract or Price Agreement.

(2) For purposes of determining whether a Purchasing Contracting Agency must give the notice required by Rule 137-046-0440(1), a Purchasing Contracting Agency 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 Purchasing Contracting Agency's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides that the Purchasing Contracting Agency 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 Purchasing Contracting Agency'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 Purchasing Contracting Agency enters into the Contract or Price Agreement, the Purchasing Contracting Agency reasonably contemplates, based on historical or other data available to the Purchasing Contracting Agency, that the total payments it will make for Goods or Services or Personal 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 Rule 137-046-0440(1) shall contain the information required by ORS 279A.215(2)(b), and Agency shall advertise the notice in the same manner as provided in ORS 279B.055(4)(b) and (c). Unless the Purchasing Contracting Agency sets forth a different time period in the notice, the Purchasing Contracting Agency shall give the notice required by this Section no fewer than 7 days before the deadline for submitting comments regarding the Purchasing Contracting Agency's intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.

(4) An Administering Contracting Agency that intends to establish a Contract or Price Agreement arising out of the Permissive Cooperative Procurement it administers may satisfy the notice requirements set forth in Rules 137-046-0440(1) and (3) by including the information required by ORS 279A.215(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 Administering Contracting Agency'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 ORS 279A.215(2), ORS 279A.215(3) and these Rules.

(5) 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 ORS 279A.215(3)(c).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.215

137-046-0450

Interstate Cooperative Procurements

A Contracting Agency that chooses to participate in, sponsor, conduct or administer an Interstate Cooperative Procurement may do so only in accordance with ORS 279A.220.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.220

137-046-0460

Advertisements of Interstate Cooperative Procurements

(1) The Solicitation Document for an Interstate Cooperative Procurement is advertised in Oregon for purposes of ORS 279A.220(2)(a) if it is advertised in Oregon in compliance with ORS 279B.055(4) or ORS 279B.060(4) by:

(a) The Administering Contracting Agency;

(b) The Purchasing Contracting Agency;

(c) The Cooperative Procurement Group, or a member of the Cooperative Procurement Group, of which the Purchasing Contracting Agency is a member; or

(d) Another Purchasing Contracting Agency that is subject to the Code, so long as such advertisement would, if given by the Purchasing Contracting Agency, comply with ORS 279B.055(4) or ORS 279B.060(4) with respect to the Purchasing Contracting Agency; or

(2) A Purchasing Contracting Agency or the Cooperative Procurement Group of which the Purchasing Contracting Agency is a member satisfies the advertisement requirement under ORS 279A.220(2)(b) if the notice is advertised in the same manner as provided in 279B.055(4)(b) and (c).

(3) The Purchasing Contracting Agency shall respond to any comments on its intent to establish a contract or price agreement through an Interstate Cooperative Procurement as set forth in ORS 279A.220(3)(c).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.220

137-046-0470

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 direct the protest to the Administering Contracting Agency, and the bidder or proposer shall make such protest in accordance with ORS 279B.400 through ORS 279B.425. If the Administering Contracting 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 Contracting 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 Contracting Agency that participates in the Cooperative Procurement, including the Administering Contracting 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) Any other protests related to a Cooperative Procurement, or disputes related to a Contract or Price Agreement arising out of a Cooperative Procurement, shall be made and resolved as set forth in ORS 279A.225.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.225

137-046-0480

Contract Amendments

A purchasing Contracting Agency may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in Rule 137-047-0800 for Goods and Service Contracts and Rule 137-049-0910 for Public Improvement Contracts.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

PUBLIC CONTRACTING RULES 2023

DIVISION 47

**PUBLIC PROCUREMENTS FOR GOODS OR SERVICES
GENERAL PROVISIONS**

137-047-0100

Application

These division 47 rules implement ORS chapter 279B, Public Procurements and apply to the Procurement of Goods or Services. These division 47 rules become effective upon adoption, and apply to Contracts first advertised, but if not advertised then entered into, on or after that date.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.015

137-047-0110

Definitions

(1) “**Advantageous**” means in the Contracting Agency's best interests, as assessed according to the judgment of the Contracting Agency.

(2) “**Affected Person**” or “**Affected Offeror**” means a Person whose ability to participate in a Procurement is adversely affected by a Contracting Agency decision. See ORS 279B.410.

(3) “**Scope**” means the range and attributes of the Goods or Services described in the applicable Procurement document.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

SOURCE SELECTION

137-047-0250

Methods of Source Selection

Except as permitted by ORS 279B.065 through 279B.085 and ORS 279A.200 through 279A.225, a Contracting Agency shall Award a Public Contract for Goods or Services based on Offers received in response to either competitive sealed Bids pursuant to ORS 279B.055 or competitive sealed Proposals pursuant to ORS 279B.060

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.050

137-047-0255

Competitive Sealed Bidding

(1) **Generally.** A Contracting Agency may procure Goods or Services by competitive sealed bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a competitive sealed bidding solicitation and shall contain the information required by ORS 279B.055(2) and by section 2 of this rule. The Contracting Agency shall provide public notice of the competitive sealed bidding solicitation as set forth in 137-047-0300.

(2) **Invitation to Bid.** In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid shall include the following:

(a) 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 Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Bids and any other special information, e.g., whether Bids may be submitted by electronic means (See Rule 137-047-0330 for required provisions of electronic Bids);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

- (E) A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1);
- (F) Bidder's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 137-046-0210(3));
- (G) How the Contracting Agency will notify Bidders of Addenda and how the Contracting Agency will make Addenda available (See Rule 137-047-0430);
- (b) Contracting Agency Need. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. Pursuant to ORS 279B.055, the Contracting Agency's description of its need to purchase must:
- (A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;
- (B) Outline the anticipated duties of the Contractor under any resulting Contract;
- (C) Establish the expectations for the Contractor's performance of any resulting Contract; and
- (D) Unless the Contracting Agency for good cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the goods or services that the Contracting Agency is purchasing.
- (c) Bidding and Evaluation Process.
- (A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;
- (B) The Contracting Agency shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). 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 Contracting Agency has available concerning future use; and
- (C) If the Contracting Agency intends to Award Contracts to more than one Bidder pursuant to Rule 137-047-0600(4)(c), the Contracting Agency shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.
- (d) Applicable preferences pursuant to ORS 279B.055(6)(b).
- (e) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385 and ORS 279B.110(2)(e). See, Rule 137-047-0640(1)(c)(F)(v).
- (f) 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 Contracting Agency. Pursuant to ORS 279B.055, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:
- (A) The Contracting Agency's reduction or withholding of payment under the Contract;
- (B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and
- (C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.
- (3) **Good Cause**. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency. The Contracting Agency shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. A Contracting Agency will have Good Cause to specify otherwise under the following circumstances:
- (a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;
- (b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated;
- (c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance, techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;
- (d) Any other circumstances in which Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the

Contracting Agency's practical need for the highest prevalent standard in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.055

137-047-0257

Multistep Sealed Bidding

- (1) **Generally.** A Contracting Agency may procure Goods or Services by using multistep sealed bidding under ORS 279B.055(12).
- (2) **Phased Process.** Multistep sealed bidding is a phased Procurement process that seeks information or unpriced submittals in the first phase combined with regular competitive sealed bidding, inviting Bidders who submitted technically eligible submittals in the first phase to submit competitive sealed price Bids in the second phase. The Contract must be Awarded to the lowest Responsible Bidder.
- (3) **Public Notice.** When a Contracting Agency uses multistep sealed bidding, the Contracting Agency shall give public notice for the first phase in accordance with Rule 137-047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the second phase to all Bidders, inform Bidders of the right to protest Addenda issued after the initial Closing under Rule 137-047-430, and inform Bidders excluded from the second phase of the right, if any, to protest their exclusion under Rule 137-047-0720.
- (4) **Procedures Generally.** In addition to the procedures set forth in Rules 137-047-0300 through 137-047-0490, a Contracting Agency shall employ the procedures set forth in this rule for multistep sealed bidding and in the Invitation to Bid.
- (5) **Procedure for Phase One of Multistep Sealed Bidding.**
- (a) **Form.** A Contracting Agency shall initiate multistep sealed bidding by issuing an Invitation to Bid in the form and manner required for competitive sealed Bids except as provided in this Rule. In addition to the requirements set forth in Rule 137-047-0255(2), the multistep Invitation to Bid must state:
- (A) That the solicitation is a multistep sealed Bid Procurement and describe the process the Contracting Agency will use to conduct the Procurement;
- (B) That the Contracting Agency requests unpriced submittals and that the Contracting Agency will consider price Bids only in the second phase and only from those Bidders whose unpriced submittals are found eligible in the first phase;
- (C) Whether Bidders must submit price Bids at the same time as unpriced submittals and, if so, that Bidders must submit the price Bids in a separate sealed envelope;
- (D) The criteria to be used in the evaluation of unpriced submittals;
- (b) **Evaluation.** The Contracting Agency shall evaluate unpriced submittals in accordance with the criteria set forth in the Invitation to Bid.
- (6) **Procedure for Phase Two of Multistep Sealed Bidding.**
- (a) **After** the completion of phase one, if the Contracting Agency does not cancel the Solicitation, the Contracting Agency shall invite each eligible Bidder to submit a price Bid.
- (b) **A Contracting Agency** shall conduct phase two as any other competitive sealed Bid Procurement except:
- (A) As specifically set forth in this Rule or the Invitation to Bid;
- (B) No public notice need be given of the invitation to submit price Bids because such notice was previously given.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.055

137-047-0260

Competitive Sealed Proposals

- (1) **Generally.** A Contracting Agency may procure Goods or Services by competitive sealed Proposals as set forth in ORS 279B.060. A Request for Proposal is used to initiate a competitive sealed Proposal solicitation and shall contain the information required by ORS 279B.060(2) and by section 2 of this rule. The Contracting Agency shall provide public notice of the competitive sealed Proposal as set forth in Rule 137-047-0300.
- (2) **Request for Proposal.** In addition to the provisions required by ORS 279B.060(2), the Request for Proposal shall include the following:
- (a) **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 Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.
- (B) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means (See Rule 137-047-0330 for required provisions of electronic Proposals);
- (C) The time, date and place of Opening;
- (D) The office where the Solicitation Document may be reviewed;
- (E) Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 137-046-0210(3)); and
- (F) How the Contracting Agency will notify Proposers of Addenda and how the Contracting Agency will make Addenda available. (See Rule 137-047-0430).
- (b) Contracting Agency Need. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. Pursuant to ORS 279B.060(2)(c), the Contracting Agency's description of its need to purchase must:
- (A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;
- (B) Outline the anticipated duties of the Contractor under any resulting Contract;
- (C) Establish the expectations for the Contractor's performance of any resulting Contract; and
- (D) Unless the Contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, transportation planning and land surveying services or related services that are subject to ORS 279C.100 to 279C.125, or the Contracting Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.
- (c) Proposal and Evaluation Process.
- (A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process.
- (B) The Contracting Agency may set forth selection criteria in the Solicitation Document per ORS 279B.060(3)(e). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall:
- (i) Afford the Contracting Agency the ability to compare the Proposals and Proposers, applying the same standards of comparison to all Proposers;
- (ii) Rationally reflect Proposers' abilities to perform the resulting Contract in compliance with the Contract's requirements; and
- (iii) Permit the Contracting Agency to determine the relative pricing offered by the Proposers, and to reasonably estimate the costs to the Contracting Agency of entering into a Contract based on each Proposal, considering information available to the Contracting Agency and subject to the understanding that the actual Contract costs may vary as a result of the Statement of Work ultimately negotiated or the quantity of Goods or Services for which the Contracting Agency contracts.
- (C) If the Contracting Agency intends to Award Contracts to more than one Proposer pursuant to Rule 137-047-0600(4)(d), the Contracting Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.
- (d) Applicable Preferences, including those described in ORS 279A.120, 279A.125(2), 282.210, and Rules 137-046-0300 through 137-046-0330.
- (e) For Contracting Agencies subject to ORS 305.385, Proposer's certification of compliance with the Oregon tax laws in accordance with ORS 305.385, as applicable and ORS 279B.110(2)(e). See, Rule 137-047-0640(1)(c)(F)(v).
- (f) All contractual terms and conditions the Contracting Agency determines are applicable to the Procurement. The Contracting Agency's determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the Contracting Agency will not include in the Request for Proposal because the Contracting Agency either will reserve them for negotiation, or will request Proposers to offer or suggest those terms or conditions. (See Rule 137-047-0262.)
- (g) As required by ORS 279B.060(2)(h), the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:
- (A) The Contracting Agency's reduction or withholding of payment under the Contract;
- (B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the scope of work or to meet the performance standards established by the resulting Contract; and

(C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(3) The Contracting Agency may include the applicable contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract, and identify those contractual terms and conditions, if any, subject to negotiation per Rule 137-047-0262(3). Further, the Contracting Agency may specify that it will include or use Proposer's terms and conditions that have been pre-negotiated under Rule 137-047-0550, but the Contracting Agency may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable Contract terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under Rule 137-047-0420.

(4) For multiple Award Contracts, the Contracting Agency may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under Rule 137-047-0420.

(5) **Good Cause.** For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency will have Good Cause to specify otherwise under the following circumstances:

- (a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;
- (b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with, or will operate efficiently or effectively with, associated information technology, hardware, software, components, equipment, parts, or on-going Services with which the Goods or Services will be used, integrated, or coordinated;
- (c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;
- (d) Any other circumstances in which the Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency's practical need for the highest standard prevalent in the applicable or closest industry or business that supplies the Goods and Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060, ORS 279A.107 & ORS 279B.130

137-047-0261

Procedures for Competitive Range, Multi-tiered and Multistep Proposals

(1) **Generally.** A Contracting Agency may procure Goods or Services employing any combination of the methods of Contractor selection as set forth in ORS 279B.060(6)(b). In addition to the procedures set forth in Rules 137-047-0300 through 137-047-0490 for methods of Contractor selection, a Contracting Agency may provide for a multi-tiered or multi-step selection process that permits awards to the highest ranked proposer at any tier or step, calls for the establishment of a competitive range, or permits either serial or competitive simultaneous discussions or negotiations with one or more proposers. A Contracting Agency may employ one or more or any combination of the procedures set forth in this rule for competitive range, multi-tiered and multi-step proposals.

(2) When a Contracting Agency's Request for Proposals prescribes a multi-tiered or multistep Contractor selection process, a Contracting Agency nevertheless may, at the completion of any stage in the competition and on determining the Most Advantageous Proposer (or, in multiple-award situations, on determining the awardees of the Public Contracts), award a Contract (or Contracts) and conclude the Procurement without proceeding to subsequent stages. The Contracting Agency also may, at any time, cancel the Procurement under ORS 279B.100.

(3) **Exclusion Protest.** A Contracting Agency may provide before the notice of an intent to Award 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 Rule 137-047-0720.

(4) **Award Protest.** A Contracting Agency shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and Rule 137-047-0740. An Affected Offeror may protest, for any of the bases set forth in Rule 137-047-0720(2), its exclusion from the Competitive Range or from any phase of a multi-tiered or multistep sealed Proposal process, or may protest an Addendum issued following initial Closing, if the Contracting Agency did not previously provide Proposers the opportunity to protest the

exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

137-047-0262

Competitive Range, Discussions and Negotiations

(1) When a Contracting Agency's solicitation process conducted under ORS 279B.060(8) calls for the Contracting Agency to establish a Competitive Range at any stage in the Procurement process, the Contracting Agency may do so as follows:

(a) Determining Competitive Range.

(A) The Contracting Agency may establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria in the Request for Proposals, the Contracting Agency may determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, however, in instances in which the Contracting Agency determines that a single Proposer has a reasonable chance of being determined the most Advantageous Proposer, the Contracting Agency need not determine or rank Proposers in the Competitive Range. In addition, notwithstanding the foregoing, a Contracting Agency may establish a Competitive Range of all Proposers to enter into discussions to correct deficiencies in Proposals.

(B) The Contracting Agency may establish the number of Proposers in the Competitive Range in light of whether the Contracting Agency's evaluation of Proposals identifies a number of Proposers who have a reasonable chance of being determined the most Advantageous Proposer, or whether the evaluation establishes a natural break in the scores of Proposers that indicates that a particular number of Proposers are closely competitive or have a reasonable chance of being determined the most Advantageous Proposer.

(b) Protesting Competitive Range. The Contracting Agency must provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Contracting Agency may provide an opportunity for Proposers excluded from the Competitive Range to protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with Rule 137-047-0720.

(2) **Discussions.** The Contracting Agency may initiate oral or written discussions with all "eligible Proposers" on subject matter within the general scope of the Request for Proposals. In conducting discussions, the Contracting Agency:

(a) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(b) May disclose other eligible Proposer's Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);

(c) May adjust the evaluation of a Proposal as a result of discussions. The conditions, terms, or price of the Proposal may be changed during the course of the discussions provided the changes are within the scope of the Request for Proposals.

(d) At any time during the time allowed for discussions, the Contracting Agency may:

(A) Continue discussions with a particular eligible Proposer;

(B) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or

(C) Conclude discussions with all remaining eligible Proposers and provide to the then-eligible Proposers, notice requesting best and final Offers.

(3) **Negotiations.** Contracting Agency may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers.

(a) The Contracting Agency may negotiate:

(A) The statement of Work;

(B) The Contract Price as it is affected by negotiating the statement of Work and other terms and conditions authorized for negotiation in the Request for Proposals or Addenda thereto; and

(C) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals or Addenda thereto. Proposers shall not submit for negotiation, and a Contracting Agency shall not accept, alternative terms and conditions that are not reasonably related to those authorized for negotiation in the Request for Proposals or any Addendum.

(4) **Terminating Negotiations.** At any time during discussions or negotiations a Contracting Agency conducts under this rule, the Contracting Agency may terminate discussions or negotiations with the highest-ranked Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the Contracting Agency reasonably believes that:

(a) The eligible Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a Contract in a timely manner.

(c) Continuing Serial Negotiations. If the Contracting Agency is conducting serial negotiations and the Contracting Agency terminates negotiations with an eligible Proposer, the Contracting Agency may then commence negotiations with the next highest scoring eligible Proposer, and continue the sequential process until the Contracting Agency has either:

(A) Determined to Award the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or

(B) Decided to cancel the Procurement under ORS 279B.100.

(d) Competitive Simultaneous Negotiations. If the Contracting Agency chooses to conduct competitive negotiations, the Contracting Agency may negotiate simultaneously with competing eligible Proposers. The Contracting Agency:

(A) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(B) May disclose other eligible Proposers' Proposals or the substance of negotiations with other eligible Proposers only if the Contracting Agency notifies all of the eligible Proposers with whom the Contracting Agency will engage in negotiations of the Contracting Agency's intent to disclose before engaging in negotiations with any eligible Proposer.

(e) Any oral modification of a Proposal resulting from negotiations must be reduced to Writing.

(5) **Best and Final Offers**. If a Contracting Agency requires best and final Offers, a Contracting Agency must establish a common date and time by which eligible Proposers must submit best and final Offers. If a Contracting Agency is dissatisfied with the best and final Offers, the Contracting Agency may make a written determination that it is in the Contracting Agency's best interest to conduct additional discussions, negotiations or change the Contracting Agency's requirements and require another submission of best and final Offers. A Contracting Agency must inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offers will be considered their best and final Offers. The Contracting Agency shall evaluate Offers as modified by the best and final Offer. The Contracting Agency shall conduct the evaluations as described in Rule 137-047-0600. The Contracting Agency may 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

137-047-0263

Multistep Sealed Proposals

(1) **Generally**. A Contracting Agency may procure Goods or Services by using multistep competitive sealed Proposals pursuant to ORS 279.060(6)(b)(G).

(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 on the technical Proposers 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 Contracting Agency 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 137-047-0300. Public notice is not required for the subsequent phases. However, a Contracting Agency 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 137-047-0720.

(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 137-047-0260(2), 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 Contracting Agency, 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.

(e) Discussion of Un-priced Technical Proposals. The Contracting Agency 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 Contracting Agency shall not disclose any information derived from one un-priced technical Proposal to any other Proposer.

(f) Methods of Contractor Selection for Phase One. In conducting phase one, a Contracting Agency may employ any combination of the methods of Contractor selection that call for establishment of a Competitive Range or include discussions, negotiations, or best and final Offers as set forth in this rule.

(g) Procedure for Phase Two. On the completion of phase one, the Contracting Agency shall invite each qualified Proposer to submit price Proposals. A Contracting Agency shall conduct phase two as any other competitive sealed Proposal Procurement except as set forth in this rule. 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

137-047-0265

Small Procurements

(1) **Generally**. For Procurements of Goods or Services less than or equal to \$25,000 a Contracting Agency may Award a Contract as a small Procurement pursuant to ORS 279B.065 by direct selection or award without any competitive or solicitation process.

(2) **Amendments**. A Contracting Agency may amend a Public Contract Awarded as a small Procurement in accordance Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to greater than one hundred twenty-five percent (125%) of the small procurement threshold stated in subsection (1) of this Rule.

Stat. Auth.: ORS 279A.065 & ORS 279B.065

Stats. Implemented: ORS 279B.065

137-047-0270

Intermediate Procurements

(1) **Generally**. For Procurements of Goods or Services greater than \$25,000 and less than or equal to \$250,000, a Contracting Agency may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.

(2) **Written Solicitations**. For any intermediate Procurements, a Contracting Agency may use a Written solicitation to obtain quotes.

(3) **Negotiations**. A Contracting Agency may negotiate with a Proposer to clarify its quote or offer or to effect modifications that will make the quote or offer acceptable or make the quote or offer more Advantageous to the Contracting Agency.

(4) **Amendments**. A Contracting Agency may amend a Public Contract Awarded as an intermediate Procurement in accordance with Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to a sum that exceeds one hundred twenty-five percent (125%) of the intermediate procurement threshold stated in subsection (1) of this Rule.

Stat. Auth.: ORS 279A.065 & ORS 279B.070

Stats. Implemented: ORS 279B.070

137-047-0275

Sole-Source Procurements

(1) **Generally**. A Contracting Agency may Award a Public Contract without competition as a sole-source Procurement, after documenting the procurement file with findings of current market research to support the

determination that the Goods or Services are available from only one seller or source. The findings shall also include:

(a) a brief description of the contract or contracts to be covered including contemplated future purchases; (b) a description of the product or service to be purchased; and (c) the reasons the Contracting Agency is seeking this procurement method, which shall include any of the following: (i) efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment, supplies, or services; or (ii) 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; or (iii) the particular product is for use in a pilot or an experimental project; or (iv) other findings that support the conclusion that the Goods or Services are available from only one source. ORS 279B.075(2)(d).

(2) **Public Notice.** If, but for the Contracting Agency's determination that it may enter into a Contract as a sole-source, a Contracting Agency would be required to select a Contractor using source selection methods set forth in either ORS 279B.055 or ORS 279B.060, a Contracting Agency shall give public notice of the Contracting Agency's determination that the Goods or Services or class of Goods or Services are available from only one source in a manner similar to public notice of competitive sealed Bids under ORS 279B.055(4) and Rule 137-047-0300. 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 Contracting Agency shall give such public notice at least seven (7) Days before Award of the Contract, unless otherwise set forth in the notice.

(3) **Protest.** An Affected Person may protest the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source in accordance with Rule 137-047-0710.

Stat. Auth.: ORS 279A.065 & ORS 279B.075

Stats. Implemented: ORS 279B.075

137-047-0280

Emergency Procurements

A Contracting Agency may Award a Public Contract as an Emergency Procurement pursuant to the requirements of ORS 279B.080. For an Emergency Procurement of construction services that are not public improvements, the Procurement shall be made with competition that is reasonable and appropriate under the circumstances, in conformance with ORS 279B.080(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.080

137-047-0285

Special Procurements

(1) **Generally.** A Contracting Agency may Award a Public Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

(2) **Public Notice.** A Contracting Agency shall give public notice of the Contract Review Authority's approval of a Special Procurement in the same manner as public notice of competitive sealed Bids under ORS 279B.055(4) and Rule 137-047-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The Contracting Agency shall give public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract, unless a different time period is stated in the request for approval notice. Award may be made at the time of approval, contingent upon expiration of the protest period or issuance of a written disposition of any protest received.

(3) **Protest.** An Affected Person may protest the approval of a Special Procurement in accordance with ORS 279B.400 and Rule 137-047-0700.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.085

137-047-0290

Cooperative Procurements

A Contracting Agency may participate in, sponsor, conduct, or administer Cooperative Procurements as set forth in ORS 279A.200 through 279A.225 and Rules 137-046-0400 through 137-046-0480.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.205

PROCUREMENT PROCESS

137-047-0300

Public Notice of Solicitation Documents

(1) **Notice of Solicitation Documents; Fee.** A Contracting Agency shall provide public notice of every Solicitation Document in accordance with section (2) of this rule, unless exempt pursuant to Rules 137-047-0265 through 137-047-0285. The Contracting Agency may give additional notice using any method it determines 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 the Contracting Agency's Procurements; or
- (b) Placing notice on the Contracting Agency's Electronic Procurement System; or
- (c) Placing notice on the Contracting Agency's Internet World Wide Web site.

(2) **Advertising.** A Contracting Agency shall advertise every notice of a Solicitation Document as follows:

- (a) The Contracting Agency shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(5); or
- (b) A Contracting Agency may publish the advertisement for Offers on the Contracting Agency's Electronic Procurement System pursuant to Rule 137-047-0330 instead of publishing notice in a newspaper of general circulation as required by ORS 279B.055(4)(b).

(3) **Content of Advertisement.** All 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 of the Solicitation Document given in accordance with subsection 2(a) or (b) 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 Contracting Agency 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 of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing be less than seven (7) Days as set forth in ORS 279B.055(4)(f). The Contracting Agency shall document the specific reasons for the shorter public notice period in the Procurement file;
- (d) The date that Persons must file applications for prequalification if prequalification is a requirement and the class or classes of Goods or Services for which Persons must 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 Contracting Agency to receive Offers;
- (g) The scheduled Opening; and
- (h) Any other information the Contracting Agency deems appropriate.

(4) **Posting Advertisement for Offers.** The Contracting Agency may post a copy of each advertisement for Offers at the principal business office of the Contracting Agency. An Offeror may obtain a copy of the advertisement for Offers upon request.

(5) **Fees.** The Contracting Agency may charge a fee or require a deposit for the Solicitation Document.

(6) **Notice of Addenda.** The Contracting Agency shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with Rule 137-047-0430.

Stat. Auth.: ORS 279A.065, ORS 279B.055 & ORS 279B.060

Stats. Implemented: ORS 279B.055 & ORS 279B.060

137-047-0310

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. The Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in Rule 137-047-0480. The Contracting Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the 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 the Contracting Agency's acceptance for the period specified in Rule 137-047-0480. The Contracting Agency may elect to accept the Offer at any time during the specified period, and the Contracting Agency's 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" for the period specified in Rule 137-047-0480, the Contracting Agency 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 in the Solicitation Document, Proposers are obligated to negotiate in good faith and only on those terms or conditions that the rules or the Solicitation Document have reserved for negotiation.

(2) **Contingent Offers.** Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to Rule 137-047-0262, a Proposer shall not make its Offer contingent upon the Contracting Agency's 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 137-047-0262, 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 Contracting Agency in Writing, and Offeror's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065, ORS 279B.055 & ORS 279B.60

137-047-0320

Facsimile Bids and Proposals

(1) **Contracting Agency Authorization.** A Contracting Agency may authorize Offerors to submit facsimile Offers. If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize facsimile Offers unless the Contracting Agency has another method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Contracting Agency shall determine that the Contracting Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Contracting Agency 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 the Contracting Agency authorizes a facsimile Offer, the Contracting Agency will include in the Solicitation Document the following:

- (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 Contracting Agency 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 must 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 Contracting Agency reserves the right to Award the Contract solely on the basis of a facsimile Offer. However, upon the Contracting Agency's request the apparent successful Offeror shall promptly submit its complete original Signed Offer";
- (e) The data and compatibility characteristics of the Contracting Agency'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 Contracting Agency 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 279A.065

137-047-0330**Electronic Procurement****(1) Electronic Procurement Authorized.**

(a) A Contracting Agency may conduct all phases of a Procurement, including without limitation the posting of Electronic Advertisements and the receipt of Electronic Offers, by electronic methods if and to the extent the Contracting Agency specifies in a Solicitation Document, a request for quotes, or any other Written instructions on how to participate in the Procurement.

(b) The Contracting Agency shall open an Electronic Offer in accordance with electronic security measures in effect at the Contracting Agency at the time of its receipt of the Electronic Offer. Unless the Contracting Agency provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.

(c) The Contracting Agency's use of electronic Signatures shall be consistent with applicable statutes and rules. A Contracting Agency may limit the use of electronic methods of conducting a Procurement as Advantageous to the Contracting Agency.

(d) If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize Electronic Offers unless the Contracting Agency has another method for receipt of such security.

(2) **Rules Governing Electronic Procurements.** The Contracting Agency shall conduct all portions of an electronic Procurement in accordance with these division 47 rules, unless otherwise set forth in this rule.

(3) **Preliminary Matters.** As a condition of participation in an electronic Procurement the Contracting Agency may require potential Contractors to register with the Contracting Agency before the date and time on which the Contracting Agency will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the Contracting Agency may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.

(4) **Offer Process.** A Contracting Agency may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the Contracting Agency specifies that Persons may submit multiple Electronic Offers during a specified period of time, the Contracting Agency must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the Contracting Agency will accept Electronic Offers for a period of time, then at the designated date and time that the Contracting Agency will first receive Electronic Offers, the Contracting Agency must begin to accept real time Electronic Offers on the Contracting Agency's Electronic Procurement System, and shall continue to accept Electronic Offers in accordance with subsection 5(b) of this rule until the date and time specified by the Contracting Agency, after which the Contracting Agency will no longer accept Electronic Offers.

(5) Receipt of Electronic Offers.

(a) When a Contracting Agency conducts an electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the Contracting Agency shall receive the Electronic Offers in accordance with these division 47 rules.

(b) When the Contracting Agency specifies that Persons may submit multiple Offers during a period of time, the Contracting Agency shall accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(A) Following receipt of the first Electronic Offer after the day and time the Contracting Agency first receives Electronic Offers the Contracting Agency shall post on the Contracting Agency's Electronic Procurement System, and updated on a real time basis, the lowest Electronic Offer price or the highest-ranking Electronic Offer. At any time before the date and time after which the Contracting Agency will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.

(B) A Person may not increase the price set forth in an Electronic Offer after the day and time that the Contracting Agency first accepts Electronic Offers.

(C) A Person may withdraw an Electronic Offer only in compliance with these division 47 rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

(6) **Failure of the E-Procurement System.** In the event of a failure of the Contracting Agency's Electronic Procurement System that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the Contracting Agency may cancel the Procurement in

accordance with Rule 137-047-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the Electronic Procurement System becomes available.

Stat. Auth.: ORS 279A.065 & ORS 279B.055
Stats. Implemented: ORS 279A.065

BID AND PROPOSAL PREPARATION

137-047-0400

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 Opening 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 Contracting Agency with all documents and descriptive literature required by the Solicitation Document.
- (4) **Electronic Submissions.** If the Solicitation Document permitted Electronic Offers under Rule 137-047-0330, an Offeror may submit its Offer electronically. The Contracting Agency shall not consider Electronic Offers unless authorized by the Solicitation Document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

137-047-0410

Offer Submission

- (1) **Product Samples and Descriptive Literature.** A Contracting Agency may require product samples or descriptive literature if the Contracting Agency determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The Contracting Agency 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 the Contracting Agency, whichever is applicable. If the Contracting Agency permits Electronic Offers or facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or facsimile Offers in accordance with these division 47 rules and the instructions set forth in the Solicitation Document.
 - (b) The Contracting Agency 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 the Contracting Agency 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

137-047-0420

Pre-Offer Conferences

- (1) **Purpose.** A Contracting Agency 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 Contracting Agency may require attendance at the pre-Offer conference as a condition for making an Offer.
- (3) **Scheduled Time.** If a Contracting Agency 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 Contracting Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Contracting Agency confirms such statements with a Written Addendum to the Solicitation Document.

(5) **Agency Announcement.** The Contracting Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with Rules 137-047-0255(2) or 137-047-0260(2).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

137-047-0430

Addenda to Solicitation Document

(1) **Issuance; Receipt.** The Contracting Agency may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the Contracting Agency otherwise specifies in the Addenda.

(2) **Notice and Distribution.** The Contracting Agency 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 Contracting Agency will provide notice of Addenda and how the Contracting Agency will make the Addenda available before Closing, and at each subsequent step or tier of evaluation if the Contracting Agency will engage in a multistep competitive sealed Bid process in accordance with Rule 137-047-0257, or a multi-tiered or multistep competitive sealed Proposal process in accordance with Rules 137-047-0261 through 137-047-0263. The following is an example of how a Contracting Agency may specify how it will provide notice of Addenda: "Contracting Agency will not mail notice of Addenda, but will publish notice of any Addenda on Contracting Agency's web site. Addenda may be downloaded off the Contracting Agency's web site. Offerors should frequently check the Contracting Agency's web site 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.**

(a) The Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by a countervailing public interest, the Contracting Agency shall not issue Addenda less than 72 hours 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 issued in accordance with ORS 279B.060(6)(d) and Rules 137-047-0261 through 137-047-0263 must be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the Contracting Agency determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The Contracting Agency shall document the factors it 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, or 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 137-047-0730, by the close of the Contracting Agency's 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 137-047-0730, 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 137-047-0730, then the Contracting Agency may consider an Offeror's request for change or protest to the Addendum only, and the Contracting Agency shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this section (4) of this rule, a Contracting Agency is not required to provide a protest period for Addenda issued after initial Closing during a multi-tier or multistep Procurement process conducted pursuant to ORS 279B.055 or ORS 279B.060.

Stat. Auth.: ORS 279A.065 & ORS 279B.060
Stats. Implemented: ORS 279B.060

137-047-0440

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 Contracting Agency in accordance with Rules 137-047-0400 and 137-047-0410, unless otherwise specified in the Solicitation Document. 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 Contracting Agency 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 Contracting Agency.

(b) The Contracting Agency 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 Contracting Agency 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

137-047-0450**Receipt, Opening, and Recording of Offers; Confidentiality of Offers.**

(1) **Receipt.** A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer.").

(2) **Opening and Recording.** A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to Rule 137-047-0440(1). In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, and such other information as the Contracting Agency considers appropriate. However, the Contracting Agency may withhold from disclosure information in accordance with ORS 279B.055(5)(c) and 279B.060(6). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279B.055

137-047-0460**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. An Agency shall not consider late Offers, withdrawals or modifications except as permitted in Rules 137-047-0470 or 137-047-0262.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279B.055

137-047-0470**Mistakes**

(1) **Generally.** To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, a Contracting Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) **Contracting Agency Treatment of Mistakes.** A Contracting Agency shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Contracting Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Contracting Agency may take the following action:

(a) A Contracting Agency 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) A Contracting Agency 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 Contracting Agency'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) A Contracting Agency 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 Contracting Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency 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 Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, 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 Contracting Agency 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.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279B.055

137-047-0480

Time for Agency 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

137-047-0490

Extension of Time for Acceptance of Offer

A Contracting Agency may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Contracting Agency 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

QUALIFICATIONS AND DUTIES

137-047-0500

Responsibility of Bidders and Proposers

Before Awarding a Contract, the Contracting Agency shall determine that the Bidder submitting the lowest Bid or Proposer submitting the most Advantageous Proposal is Responsible. The Contracting Agency shall use the standards set forth in ORS 279B.110 and Rule 137-047-0640(1)(c)(F) to determine if a Bidder or Proposer is Responsible. In the event a Contracting Agency determines a Bidder or Proposer is not Responsible it shall prepare a Written determination of non-Responsibility as required by ORS 279B.110 and shall reject the Offer.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.110

137-047-0525

Qualified Products Lists

A Contracting Agency may develop and maintain a qualified products list pursuant to ORS 279B.115.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.115

137-047-0550

Prequalification of Prospective Offerors

- (1) A Contracting Agency may prequalify prospective Offerors pursuant to ORS 279B.120 and 279B.125.
 (2) Notwithstanding the prohibition against revocation of prequalification in ORS 279B.120(3), a Contracting Agency may determine that a prequalified Offeror is not Responsible prior to Contract Award.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.120

137-047-0575

Debarment of Prospective Offerors

- (1) **Generally.** A Contracting Agency may Debar prospective Offerors for the reasons set for the in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.
 (2) **Responsibility.** Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b), a Contracting Agency may determine that a previously Debarred Offeror is not Responsible prior to Contract Award.
 (3) **Imputed Knowledge.** A Contracting Agency 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.
 (4) **Limited Participation.** A Contracting Agency 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 a Contracting Agency. 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

OFFER EVALUATION AND AWARD

137-047-0600

Offer Evaluation and Award

(1) **Contracting Agency Evaluation.** The Contracting Agency shall evaluate Offers only as set forth in the Solicitation Document, pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The Contracting Agency shall not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids.

(A) **Nonresident Bidders.** In determining the lowest Responsive Bid, the Contracting Agency shall apply the reciprocal preference set forth in ORS 279A.120(2)(b) and Rule 137-046-0310 for Nonresident Bidders.

(B) **Public Printing.** The Contracting Agency 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 Contracting Agency determines that one or more Bids are identical under Rule 137-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in Rule 137-046-0300.

(b) **Evaluation of Proposals.**

(A) **Award When Proposals are Identical.** If the Contracting Agency determines that one or more Proposals are identical under Rule 137-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in Rule 137-046-0300.

(B) **Public Printing.** The Contracting Agency 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 Contracting Agency shall give preference for recycled materials as set forth in ORS 279A.125 and Rule 137-046-0320.

(2) **Clarification of Bids or Proposals.** After Opening, a Contracting Agency may conduct discussions with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Offer. All Offers, in the Contracting Agency's sole discretion, needing clarification shall be accorded such an opportunity. The Contracting Agency shall document clarification of any Offer in the Procurement file.

(3) **Negotiations.**

(a) **Bids.** Except as permitted by section 2 of this rule, a Contracting Agency shall not negotiate with any Bidder. After Award of the Contract, the Contracting Agency and Contractor may only modify the Contract in accordance with Rule 137-047-0800.

(b) **Requests for Proposals.** A Contracting Agency may conduct discussions or negotiate with Proposers only in accordance with ORS 279B.060(6)(b) and Rule 137-047-0262. After Award of the Contract, the Contracting Agency and Contractor may only modify the Contract in accordance with Rule 137-047-0800.

(4) **Award.**

(a) **General.** If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The Contracting Agency 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 Contracting Agency's expected purchases, or grand total of all items.

(c) **Multiple Awards - Bids.**

(A) Notwithstanding subsection 4(a) of this rule, a Contracting Agency 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 Contracting Agency'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 the Contracting Agency from Awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the Contracting Agency 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, a Contracting Agency 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 Contracting Agency'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 the Contracting Agency from Awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the Contracting Agency 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 Contracting Agency determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

- (A) The Contracting Agency may Award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or
- (B) The Contracting Agency 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. A Contracting Agency 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

137-047-0610

Notice of Intent to Award

- (1) **Notice of Intent to Award**. The Contracting Agency shall provide Written notice of its intent to Award to all Bidders and Proposers pursuant to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the Contracting Agency determines that circumstances require prompt execution of the Contract, in which case the Contracting Agency may provide a shorter notice period in the Solicitation documents. The Contracting Agency shall document the specific reasons for the shorter notice period in the Procurement file.
- (2) **Finality**. The Contracting Agency's Award shall not be final until the later of the following:
- The expiration of the protest period provided pursuant to Rule 137-047-0740; or
 - The Contracting Agency provides Written responses to all timely-filed protests denying the protests and affirming the Award.
- (3) If so provided in the Solicitation documents, said notice of intent to Award may be issued via facsimile or electronic data exchange.

Stat. Auth.: ORS 279A.065 & ORS 279B.135
 Stats. Implemented: ORS 279B.135

137-047-0620

Documentation of Award

- (1) **Basis of Award**. After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's Procurement file.
- (2) **Contents of Award Record**. The Contracting Agency's record shall include:
- For Bids:
 - Bids;
 - Completed Bid tabulation sheet; and
 - Written justification for any rejection of lower Bids.
 - For Proposals:
 - Proposals;
 - The completed evaluation of the Proposals;
 - Written justification for any rejection of higher scoring Proposals; and
 - If the Contracting Agency engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and Rules 137-047-0261 through 137-047-0263, written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures the Contracting Agency used to select a Proposer to which the Contracting Agency Awarded a Contract.

Stat. Auth.: ORS 279A.065
 Stats. Implemented: ORS 279A.065

137-047-0630

Availability of Award Decisions

- (1) **Contract Documents**. To the extent required by the Solicitation Document, the Contracting Agency 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, in person or by submitting to the Contracting Agency 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 Contracting Agency may make available tabulations of Bids and Proposals through the Electronic Procurement System of the Contracting Agency or the Contracting Agency's website.

(3) Availability of Procurement Files. After notice of intent to Award, the Contracting Agency shall make Procurement files available in accordance with applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.055 & ORS 279B.060

137-047-0640

Rejection of an Offer

(1) Rejection of an Offer.

(a) A Contracting Agency may reject any Offer as set forth in ORS 279B.100.

(b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:

- (A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ 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;
- (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 Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:

- (A) Has not been prequalified under ORS 279B.120 and the Contracting Agency required mandatory prequalification;
- (B) Has been Debarred as set forth in ORS 279B.130 or has been disqualified pursuant to Rule 137-046-0210(4) (DBE Disqualification);
- (C) Has not met the requirements of ORS 279A.105, 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 under ORS 279A.110(4); or
- (F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the Contracting Agency must determine pursuant to ORS 279B.110 that the Offeror:
 - (i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities; and
 - (ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency 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 Contracting Agency 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 Contracting Agency may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(b);
 - (iii) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency 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 ORS 279B.130 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(c);
 - (iv) Is legally qualified to contract with the Contracting Agency;
 - (v) Has attested in Writing that the Offeror complied with the tax laws of this state and of political subdivisions of this state. Such certification demonstrates Offeror's compliance with such law in a credible and convenient way; and

(vi) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning Responsibility, the Contracting Agency 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 Contracting Agency 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 ORS 279B.130.

(3) **Notice.** Contracting Agency need not provide an Offeror with any notice in the event that its Offer is rejected. However, Contracting Agency will provide all Offerors with a Notice of Intent to Award, as required, pursuant to Rule 137-047-0610.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100, ORS 279B.110 & ORS 279B.130

137-047-0650

Rejection of All Offers

(1) **Rejection.** A Contracting Agency may reject all Offers as set forth in ORS 279B.100. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.

(2) **Criteria.** The Contracting Agency 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 Contracting Agency cancels the Procurement or solicitation in accordance with Rule 137-047-0660; 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

137-047-0660

Cancellation of Procurement or Solicitation

(1) **Cancellation in the Public Interest.** A Contracting Agency may cancel a Procurement or solicitation as set forth in ORS 279B.100.

(2) **Notice of Cancellation Before Opening.** If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency shall provide Written notice of cancellation in the same manner that the Contracting Agency initially provided 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 Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency shall provide Written notice of cancellation to all Offerors who submitted Offers.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

137-047-0670

Disposition of Offers if Procurement or Solicitation Canceled

(1) **Prior to Opening.** If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency 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 Contracting Agency shall open the Offer to determine the source and then return it to the

Offeror. For Electronic Offers, the Contracting Agency shall delete the Offers from the Contracting Agency's Electronic Procurement System or information technology system.

(2) **After Opening.** If the Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency:

(a) May return Proposals in accordance with ORS 279B.060(6)(c); and.

(b) Shall keep Bids in the Procurement file.

(3) **Rejection of All Offers.** If the Contracting Agency rejects all Offers, the Contracting Agency shall keep all Proposals and Bids in the Procurement file.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

LEGAL REMEDIES

137-047-0700

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 must file a Written protest with the Contract Review Authority for the Contracting Agency and exhaust all administrative remedies.

(2) **Delivery.** Notwithstanding the requirements for filing a writ of review under ORS chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Contract Review Authority for the Contracting Agency within seven (7) Days after the first date of public notice of the approval of a Special Procurement by the Contract Review Authority for the Contracting Agency, 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 must 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) **Contract Review Authority Response.** The Contract Review Authority 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 Contract Review Authority shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.

(5) **Judicial Review.** An Affected Person may seek judicial review of the Contract Review Authority's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

Stat. Auth.: ORS 279A.065 & ORS 279B.400

Stats. Implemented: ORS 279B.400

137-047-0710

Protests and Judicial Review of Sole-Source Procurements

(1) **Purpose.** For sole-source Procurements requiring public notice under Rule 137-047-0275, an Affected Person may protest the determination of the Contract Review Authority or designee that the Goods or Services or class of Goods or Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a Written protest with the Contract Review Authority or designee and exhaust all administrative remedies.

(2) **Delivery.** Unless otherwise specified in the public notice of the sole-source Procurement, an Affected Person must deliver a Written protest to the Contract Review Authority or designee 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 must 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) **Contract Review Authority Response.** The Contract Review Authority or designee shall not consider an Affected Person's sole-source Procurement protest 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 Contract Review Authority or designee shall issue a Written disposition of the

protest in a timely manner. If the Contract Review Authority or designee upholds the protest, in whole or in part, the Contracting Agency shall not enter into a sole-source Contract.

(5) **Judicial Review.** Judicial review of the Contract Review Authority's or designee's disposition of a sole-source Procurement protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.075

137-047-0720

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 pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a Written protest with the Contracting Agency 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 Contracting Agency's 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 must 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 Contracting Agency 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 must deliver a Written protest to the Contracting Agency 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 must specify the grounds upon which the protest is based.

(5) **Contracting Agency Response.** The Contracting Agency 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 Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum under Rule 137-047-0430 reflecting its disposition or cancel the Procurement or solicitation under Rule 137-047-0660.

(6) **Judicial Review.** Judicial review of the Contracting Agency's 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

137-047-0730

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 ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.

(b) Specific Special Procurements. Notwithstanding section 1(a) of this rule, a Person may not protest, challenge, or review approval of a Special Procurement except in conformance with ORS 279B.400.

(2) **Delivery.** Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the Contracting Agency 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 desired 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) **Contracting Agency Response.** The Contracting Agency 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 Contracting Agency shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The

Contracting Agency shall issue a Written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum reflecting its disposition under Rule 137-047-0430 or cancel the Procurement or solicitation under Rule 137-047-0660.

(5) **Extension of Closing.** If the Contracting Agency receives a protest from a prospective Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency 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 that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.

(7) **Judicial Review.** Judicial review of the Contracting Agency's 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

137-047-0740

Protests and Judicial Review of Contract Award

(1) **Purpose.** An Offeror may protest the Award of a Contract, or the intent to Award of a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's Contract Award decision. These administrative remedies apply to all public contracts awarded by Contracting Agency, including those awarded pursuant to an intermediate procurement.

(2) **Delivery.** Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the notice of intent to Award the Contract, or Award of a Contract, whichever occurs first.

(3) **Content of Protest.** An Offeror's Written protest shall specify the grounds for the protest to be considered by the Contracting Agency pursuant to ORS 279B.410(2).

(4) **Contracting Agency Response.** The Contracting Agency 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 Contracting Agency shall issue a Written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either Award the Contract to the successful protestor or cancel the Procurement or solicitation.

(5) **Judicial Review.** Judicial review of the Contracting Agency's 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.

137-047-0745

Protests and Judicial Review of Qualified Products List Decisions

(1) **Purpose.** A prospective Offeror may protest the Contracting Agency's decision to exclude the prospective Offeror's Goods from the Contracting Agency's qualified products list under ORS 279B.115. A prospective Offeror must file a Written protest and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's qualified products list decision.

(2) **Delivery.** Unless otherwise stated in the Contracting Agency's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list, a prospective Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the Contracting Agency's 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 must specify the grounds upon which the protest is based.

(4) **Contracting Agency Response.** The Contracting Agency 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 Contracting Agency's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list. The Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, it shall include the successful protestor's Goods on the qualified products list.

(5) **Judicial Review.** Judicial review of the Contracting Agency's 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

137-047-0750

Judicial Review of Other Violations

Any violation of ORS chapter 279A or 279B by a Contracting Agency 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

137-047-0760

Review of Prequalification and Debarment Decisions

Review of the Contracting Agency's prequalification and Debarment decisions shall be as set forth in ORS 279B.425.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.425

137-047-0800

Amendments to Contracts and Price Agreements

(1) **Generally.** A Contracting Agency may amend a Contract without additional competition in any of the following circumstances:

- (a) The amendment is within the scope of the Procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special Procurement, if any. An amendment is not within the scope of the Procurement if the Agency determines that if it had described in the Procurement the changes to be made by the amendment, it would likely have increased competition or affected award of the Contract.;
 - (b) These Rules otherwise permit the Contracting Agency to Award a Contract without competition for the goods or services to be procured under the Amendment.
 - (c) The amendment is necessary to comply with a change in law that affects performance of the Contract.
 - (d) The amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the amendment is Advantageous to the Contracting Agency, subject to all of the following conditions:
 - (A) The Goods or Services to be provided under the amended Contract are the same as the Goods or Services to be provided under the unamended Contract.
 - (B) The Contracting Agency determines that, with all things considered, the amended Contract is at least as favorable to the Contracting Agency as the unamended Contract; and
 - (C) The renegotiated Contract will not increase or extend the total term of the original contract by more than one (1) year. 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 one (1) year longer than the longest term of any of the prior Contracts.
 - (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.
- (2) **Small or Intermediate Contract.** A Contracting Agency may amend a Contract Awarded as a small or intermediate Procurement pursuant to Section 1 of this rule, provided also that the total increased Contract Price does not exceed amendment allowances set forth in Rule 137-047-0265(2) for small Procurements and Rule 137-047-0270(4) for intermediate Procurements.
- (3) **Emergency Contract.** A Contracting Agency 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.
- (4) **Price Agreements.** A Contracting Agency may amend or terminate a Price Agreement as follows:
- (a) As permitted by the Price Agreement;
 - (b) As permitted by this rule;
 - (c) If the circumstances set forth in ORS 279B.140(2) exist; or
 - (d) As permitted by applicable law.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

137-047-0810

Termination of Price Agreements

(1) A Contracting Agency may terminate a Price Agreement as follows:

- (a) As permitted by the Price Agreement.
- (b) If the circumstances set forth in ORS 279B.140(2) exist; or
- (c) As permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279B.140

PUBLIC CONTRACTING RULES 2023

DIVISION 48

CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, PHOTOGRAMMETRIST, TRANSPORTATION PLANNING AND LAND SURVEYING SERVICES AND RELATED SERVICES CONTRACTS

137-048-0100**Application**

These division 48 rules apply to the screening and selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services under Contracts, and set forth the following procedures:

- (a) Procedures through which Contracting Agency selects Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and
- (b) Two-tiered procedures for selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services for certain public improvements owned and maintained by a Local Government.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.105

137-048-0110**Definitions**

In addition to the definitions set forth in ORS 279A.010, 279C.100, and Rule 137-046-0110, the following definitions apply to these division 48 rules:

- (1) "**Consultant**" means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or provider of Related Services. A Consultant includes a business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors or providers of Related Services, or any combination of the foregoing.
- (2) "**Estimated Fee**" means Contracting Agency'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.
- (3) "**Price Agreement**," for purposes of this Division 48, is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under agreed-upon terms and conditions, including, but not limited to terms and conditions of later work orders or task orders for Project-specific Services, and which may include price or Consultant compensation information, with:
 - (a) No guarantee of a minimum or maximum purchase; or
 - (b) An initial work order, task order or minimum purchase, combined with a continuing Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services in which the Contracting Agency does not guarantee a minimum or maximum additional purchase.
- (4) "**Project**" means all components of a Contracting Agency's planned undertaking that gives rise to the need for a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under a Contract.
- (5) "**Transportation Planning Services**" are defined in ORS 279C.100. Transportation Planning Services include only Project-specific transportation planning involved in the preparation of categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not directly associated with an individual Project that will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.
- (6) "**Related Services**" means personal services, other than architectural, engineering, photogrammetric, mapping, Transportation Planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvements, including, but not limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services,

material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner's representation services or land-use planning services.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.105

137-048-0120

[Reserved.]

137-048-0130

Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest

(1) When selecting the most qualified Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Contracting Agency shall follow the applicable selection procedure under either Rule 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure). In following the Direct Appointment Procedure under Rule 137-048-0200, Contracting Agency may base its selection of a consultant on any information available to Agency.

(2) When selecting Consultants to perform Related Services, Contracting Agency shall follow either its Division 47 or Division 48 rules, as determined in its sole discretion.

(3) A Contracting Agency has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under an individual work order or task order. Provided, however, the criteria and procedures the Contracting Agency uses to select a single Consultant, when the Contracting Agency has established Price Agreements with more than one Consultant, must meet the requirements of Rule 137-048-0270 (Price Agreements).

(4) Contracting Agency may use electronic methods to screen and select a Consultant in accordance with the procedures described in Rule 137-047-0330 (Electronic Procurement).

(5) For purposes of these division 48 rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. A Contracting Agency's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. A Contracting Agency will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the Contracting Agency shall comply with the requirements of ORS 279C.110 and Section (1) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for Related Services, the Contracting Agency shall comply with the requirements of ORS 279C.120 and Section (2) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, the Contracting Agency shall comply with the applicable provisions of the Public Contracting Code and Divisions 46, 47 and 49 of these Rules that match the predominant purpose of the Contract.

(6) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to proposals received by a Contracting Agency for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:

(a) The term "competitive proposal," for purposes of ORS 279C.107, includes proposals submitted under these Division 48 Rules.

(b) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where the Contracting Agency is conducting discussions or negotiations with proposers who submit proposals that the Contracting Agency has determined to be closely competitive or to have a reasonable chance of being selected for award, the Contracting Agency may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, Contracting Agency may open proposals in such a way as to avoid disclosure of the contents until after the Contracting Agency executes a Contract with the selected Consultant. If the Contracting Agency determines that it is in the best interest of the Contracting Agency to do so, the Contracting Agency may make proposals available for public inspection following the Contracting Agency's issuance of a notice of intent to award a Contract to a Consultant.

(c) Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.

(7) Per ORS 279C.307, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS chapter 279C, and unless permitted by ORS 279C.307(3), Contracting Agency may not:

(a) Procure services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract from a Contractor or an affiliate of a Contractor who is a party to the Public

Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Services; or

(b) Procure services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Services.

(8) The requirements of ORS 279C.307 and Section (7) of this rule apply in the following circumstances, except as provided in Section (9) of this rule:

(a) A Contracting Agency requires the Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, a Public Contract for Related Services or a Public Contract for construction services under ORS chapter 279C.

(b) The Procurements of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:

(A) Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, which involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, construction services subject to ORS chapter 279C, commissioning services or other Related Services for a Project;

(D) Procurements for special inspections and testing services, which involve inspecting, testing or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C; and

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section (8)(a) of this rule.

(9) The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:

(a) To a Contracting Agency's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in Rule 137-049-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement; and

(b) To a Contracting Agency's Procurement of both pre-construction services and construction services through a single "Construction Manager/General Contractor" Procurement, as defined in Rule 137-049-0610. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Contract or performance under such a Contract resulting from a Construction Manager/General Contractor Procurement.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.100-279C.125

SELECTION PROCEDURES

137-048-0200

Direct Appointment Procedure

(1) Contracting Agency may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these rules if:

(a) Contracting Agency finds that an Emergency exists; or

(b) The Estimated Fee to be paid under the Contract does not exceed \$100,000; or

(c) The following requirements are met:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services 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, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract; and

(B) Contracting Agency used either the formal selection procedure under Rule 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract.

(d) Continuation of Project With Extensive Estimated Fee. Where a Project is being continued under subsection 1(c) of this rule, and the Estimated Fee is expected to exceed \$250,000, the Contracting Agency must make written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:

(A) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency; 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.

(2) Contracting Agency may select a Consultant for a Contract under this rule from any and all Consultants offering the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that the Contracting Agency reasonably can identify under the circumstances.

(3) The Contracting Agency shall direct negotiations with a Consultant selected under this rule toward obtaining written agreement on:

(a) The Consultant's performance obligations and performance schedule;

(b) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C110 & ORS 279C.115

137-048-0210

Informal Selection Procedure

(1) Contracting Agency may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed \$250,000.

(2) If using the informal selection procedure on the basis of qualifications alone or, for Related Services, on the basis of price and/or qualifications, Contracting Agency shall:

(a) Create a Request for Proposals that includes at a minimum the following:

(A) A description of the Project for which a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that will be required under the resulting Contract;

(B) The 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) The date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which the most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:

(i) Consultant's specialized experience, capabilities and technical competence, which may be demonstrated with Consultant's proposed approach and methodology to meet the project requirements;

(ii) The amount and type of resources and number of experienced staff the Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services 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, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;

(iii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals;

(iv) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, including but not limited to quality of work, ability to meet schedules, cost control methods and Contract administration practices;

- (v) A Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals and design philosophy, if applicable;
 - (vi) A Consultant's geographic proximity to and familiarity with the physical location of the Project;
 - (vii) Volume of work, if any, previously awarded to a Consultant, 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;
 - (viii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;
 - (ix) If the Contracting Agency complies with the additional requirements of Section (3) of this Rule or is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead.
- (F) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;
- (G) A statement directing Proposers to the protest procedures set forth in these Division 48 rules; and
- (H) A sample form of the Contract.
- (b) Provide a Request for Proposals to a minimum of three (3) prospective Consultants drawn from any and all Consultants that the Contracting Agency reasonably can locate that offer the desired Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, or any combination of the foregoing. If three (3) prospective Consultants cannot reasonably be located, Contracting Agency shall document its efforts in writing and provide the RFP to those Consultants that were located.
- (c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals.
- (3) Pricing policies, proposals or other pricing information may be used as part of the Contracting Agency's screening and selection process, if Contracting Agency:
- (a) States in the RFP:
 - (A) That the Contracting Agency will screen and select Consultants as provided in ORS 279C.110(5);
 - (B) How the Contracting Agency will rank proposals from Consultants, with a specific focus on:
 - (i) Which factors the Contracting Agency will consider in evaluating proposals, including pricing policies, proposals, or other pricing information; and
 - (ii) The relative weight in points or percentages the Contracting Agency will give each factor;
 - (C) An estimate of the cost of services the Contracting Agency seeks in the procurement;
 - (D) A sufficiently detailed scope of work to enable a Consultant to prepare a responsive Proposal.
 - (b) First evaluates each Consultant on the basis of the Consultant's qualifications to perform the services described in the solicitation document.
 - (c) Announces the evaluation scores and rank of each Consultant according to the solicitation criteria. The Contracting Agency may identify up to three (3) of the top-ranked prospective Consultants as qualified to perform the services sought and may request a pricing proposal from each. The pricing proposals:
 - (A) Must include:
 - (i) A schedule of hourly rates that the Consultant will charge for the work of each individual or each labor classification that will perform the services sought that is irrevocable for not less than ninety (90) days after the date of the Proposal; and
 - (ii) A reasonable estimate of hours that the Consultant will require to perform the services sought.
 - (B) May include, at the Contracting Agency's request, additional pricing information that is limited to:
 - (i) A description of each task proposed by Consultant;
 - (ii) A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to each individual or labor classification; and
 - (iii) A list of reimbursable expenses, including travel expenses, that the Consultant expects to incur when providing the proposed services.
 - (d) Permits each top-ranked Consultant to withdraw from consideration for award if the Consultants does not wish to provide a price proposal.
 - (f) Completes the evaluation and selects a Consultant from among the identified top-ranked Consultants, giving not more than fifteen (15) percent weight to each Consultant's price proposal.
- (4) If Contracting Agency does not cancel the RFP after it reviews and ranks each Consultant, Contracting Agency will begin negotiating a Contract with the highest ranked Consultant. Contracting Agency shall direct negotiations toward obtaining written agreement on:
- (a) The Consultant's scope of services, performance obligations and performance schedule;
 - (b) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

- (c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.
- (5) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Consultant, if the Contracting Agency and Consultant are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Consultant, and if necessary, with the third ranked Consultant, in accordance with Section (4) of this rule, and as limited by Section (3) of this rule to the identified top-ranked Consultants, if price was an evaluation criteria, until negotiations result in a Contract. If negotiations with any of the Consultants do not result in a Contract within a reasonable amount of time, the Contracting Agency 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 137-048-0220 (Formal Selection Procedure).
- (6) The Contracting Agency shall terminate the informal selection procedure and proceed with the formal selection procedure under Rule 137-048-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$250,000.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C.110

137-048-0220

Formal Selection Procedure

- (1) Contracting Agency shall use the formal selection procedure described in this rule to select Consultants if the Consultants cannot be selected under either 137-048-0200 (Direct Appointment Procedure) or under 137-048-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at Contracting Agency's discretion.
- (2) When using the formal selection procedure Contracting Agency shall obtain Contracts through public advertisement of Requests for Proposals, or Requests for Qualifications followed by Requests for Proposals.
- (a) Except as provided in subsection (b) of this section, Contracting Agency shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as desired by Contracting Agency to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.
- (A) Contracting Agency shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.
- (B) Contracting Agency shall include a brief description of the following items in the advertisement:
- (i) The Project;
 - (ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;
 - (iii) How and where Consultants may obtain a copy of the RFQ or RFP; and
 - (iv) The deadline for submitting a Proposal or response to the RFQ or RFP.
- (b) In the alternative to advertising in a newspaper as described in subsection (2)(a) of this rule, the Contracting Agency shall publish each RFP and RFQ by one or more of the electronic methods identified in Rule 137-046-0110(14). The Contracting Agency shall comply with subsections (2)(a)(A) and (2)(a)(B) of this rule when publishing advertisements by electronic methods.
- (c) In addition to publishing notice under Subsections (a) and (b) of this Section, Contracting Agency may also choose to send the RFP or RFQ, or notice thereof, directly to qualified Consultants.
- (3) Request for Qualifications Procedure. Contracting Agency may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the Contracting Agency may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ.
- (a) A Contracting Agency shall include the following, at a minimum, in each RFQ:
- (A) A brief description of the Project for which the Contracting Agency is seeking Consultants;
 - (B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks for the Project;
 - (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 but not limited to construction services;
 - (D) The deadline for submitting a response to the RFQ;
 - (E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;
 - (F) The RFQ evaluation criteria, including weights, points or other classifications applicable to each criterion;
 - (G) A statement whether or not the Contracting Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation

Planning or Land Surveying Services or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and
 (H) A Statement that Consultants responding to the RFQ do so solely at their expense, and that the Contracting Agency is not responsible for any Consultant expenses associated with the RFQ.

(b) A Contracting Agency may not request pricing policies, cost proposals, or other pricing information in the RFQ, but may request for any or all of the following:

- (A) A statement describing Consultants' general qualifications and related performance information;
- (B) A description of Consultants' specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ including Consultants' committed resources and recent, current and projected workloads;
- (C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
- (D) A copy of all records, if any, of Consultants' performance under Contracts with any other Contracting Agency;
- (E) The number of Consultants' experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;
- (F) Consultants' approaches to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;
- (G) Consultants' geographic proximity to and familiarity with the physical location of the Project;
- (H) Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;
- (I) If the Contracting Agency is selecting a Consultant to provide Related Services, Consultants' pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;
- (J) Consultants' ability to assist Contracting Agency in complying with the solar energy technology requirements of ORS 279C.527; and

(K) Any other information Contracting Agency deems reasonably necessary to evaluate Consultants' qualifications.
 (c) Contracting Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to, the following:

- (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;
- (C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ.
- (d) No Consultant will be eligible for placement on a Contracting Agency's short list established under subsection (3)(d) of this rule if Consultant or any of Consultant's principals, partners or associates are members of the Contracting Agency's RFQ evaluation committee.
- (e) Except when the RFQ is cancelled, a Contracting Agency shall provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants Through Request for Proposals. Contracting Agency shall use the procedure described in this Section (4) of this rule when issuing an RFP for a Contract described in Section (1) of this rule.

(a) RFP Required Contents. Contracting Agency 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, Photogrammetric Mapping, Transportation Planning or Land Surveying Services 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, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought will be performed.

(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If the Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

- (i) Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable projects;
- (iii) The amount and type of resources, and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

- (iv) The recent, current and projected workloads of the staff and resources referenced in subsection (4)(a)(B)(iii), above;
- (v) The proportion of time Proposers estimate that the staff referenced in subsection (4)(a)(B)(iii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance;
- (vii) References and recommendations from past clients;
- (viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and contract administration;
- (ix) Status and quality of any required license or certification;
- (x) Proposers' knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services 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, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (xiii) If the Contracting Agency complies with the additional requirements of Section (4)(b) of this Rule, or is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead; and
- (xiv) Any other criteria that the Contracting Agency deems relevant to the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, these additional criteria cannot include pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, when the sole purpose or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.
- (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 but not limited to construction services;
- (D) Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;
- (E) The date and time Proposals are due, and the delivery location for Proposals;
- (F) Reservation of the right to seek clarifications of each Proposal;
- (G) Reservation of the right to negotiate a final Contract that is in the best interest of the Contracting Agency;
- (H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at any time if doing either would be in the public interest as determined by the Contracting Agency;
- (I) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;
- (J) A statement directing Proposers to the protest procedures set forth in these division 48 rules;
- (K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;
- (L) A statement whether or not the Contracting Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services 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;
- (M) A request for any information the Contracting Agency deems reasonably necessary to permit the Contracting Agency to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (N) Where applicable, a statement requiring design compliance with ORS 279C.527, regarding green energy technology; and
- (O) A sample form of the Contract.
- (b) Pricing policies, proposals or other pricing information may be used as part of the Contracting Agency's screening and selection process, if Contracting Agency:
 - (A) States in the RFP:
 - (i) That the Contracting Agency will screen and select Consultants as provided in ORS 279C.110(5);
 - (ii) How the Contracting Agency will rank proposals from Consultants, with a specific focus on:

1. Which factors the Contracting Agency will consider in evaluating proposals, including pricing policies, proposals, or other pricing information; and
 2. The relative weight in points or percentages the Contracting Agency will give each factor;
 - (iii) An estimate of the cost of services the Contracting Agency seeks in the procurement;
 - (iv) A sufficiently detailed scope of work to enable a Consultant to prepare a responsive Proposal.
- (B) First evaluates each Consultant on the basis of the Consultant's qualifications to perform the services described in the solicitation document.
- (C) Announces the evaluation scores and rank of each Consultant according to the solicitation criteria. The Contracting Agency may identify up to three (3) of the top-ranked prospective Consultants as qualified to perform the services sought and may request a pricing proposal from each. The pricing proposals:
- (i) Must include:
 1. A schedule of hourly rates that the Consultant will charge for the work of each individual or each labor classification that will perform the services sought that is irrevocable for not less than ninety (90) days after the date of the Proposal; and
 2. A reasonable estimate of hours that the Consultant will require to perform the services sought.
 - (ii) May include, at the Contracting Agency's request, additional pricing information that is limited to:
 1. A description of each task proposed by Consultant;
 2. A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to each individual or labor classification; and
 3. A list of reimbursable expenses, including travel expenses, that the Consultant expects to incur when providing the proposed services.
- (D) Permits each top-ranked Consultant to withdraw from consideration for award if the Consultant does not wish to provide a price proposal.
- (E) Completes the evaluation and selects a Consultant from among the identified top-ranked Consultants, giving not more than fifteen (15) percent weight to each Consultant's price proposal.
- (c) RFP Evaluation Committee. The Contracting Agency shall either establish a committee or designate an individual to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Contracting Agency may include the same members who served on the RFQ evaluation committee. The Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agency with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public Contracting. At least one member of an evaluation committee must be a Contracting Agency employee. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. If formed, the Contracting Agency shall designate a member of the evaluation committee as the evaluation committee chairperson.
- (d) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of the Contracting Agency's RFP evaluation committee for the Contract;
- (e) If the Contracting Agency does not cancel the RFP after completing the scoring and ranking for each Proposer, the Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. The Contracting Agency shall direct negotiations toward obtaining written agreement on:
- (A) The Consultant's scope of services, performance obligations and performance schedule;
 - (B) Payment methodology, Consultant's rates and number hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and
 - (C) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.
- (f) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with subsection (4)(e), and as limited by subsection (4)(b) of this rule to the identified top-ranked Consultants, if price was an evaluation criteria, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular formal solicitation. Nothing in this rule precludes a Contracting Agency from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.110 & ORS 279C.527

137-048-0230**Ties Among Proposers**

(1) If Contracting Agency 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 Contracting Agency may select a candidate through any process that the Contracting Agency believes will result in the best value for the Contracting Agency taking into account the scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services. Provided, however, the tie breaking process established by the Contracting Agency under this Section (1) cannot be based on the Consultant's pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead. The process must be designed to instill public confidence through ethical and fair dealing, honesty and good faith on the part of the Contracting Agency and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, the Contracting Agency and the selected Proposer shall proceed with negotiations under Rules 137-048-0210(4) or 137-048-0220(4)(c), as applicable.

(2) If Contracting Agency is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then the Contracting Agency shall follow the procedure set forth in Rule 137-046-0300 (Preferences for Oregon Goods and Services), to select the Consultant.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C.105 & ORS 279C.110

137-048-0240**Protest Procedures**

(1) **RFP Protest and Request for Change.** Pursuant to ORS 279C.110(8), 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 seven (7) calendar days prior to the date Proposals are due, unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or Contract terms. The Contracting Agency may not consider any protest or request for change that is submitted after the submission deadline.

(2) **Protest of Consultant Selection.** Pursuant to ORS 279C.110(8), Consultants may protest Contracting Agency's Consultant selection for award, as follows:

(a) **Single Award.** In the event of an award to a single Proposer, the Contracting Agency shall provide to all Proposers a copy of the selection notice that the Contracting Agency sent 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 the Contracting Agency no later than seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must 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, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(b) **Multiple Award.** In the event of an award to more than one Proposer, the Contracting Agency shall provide to all Proposers copies of the selection notices that the Contracting Agency sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a written protest of the selection to the Contracting Agency no later than seven (7) calendar days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers, are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(c) **Effect of Protest Submission Deadline.** A Contracting Agency may not consider any protest that is submitted after the submission deadline.

(3) **Resolution of Protests.** A duly authorized representative of the Contracting Agency shall resolve all timely submitted protests within a reasonable time following the Contracting Agency's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the Contracting Agency shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & 279C.110

137-048-0250**Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility for Costs**

A Contracting Agency may cancel, delay or suspend a solicitation, RFQ or other preliminary Procurement document, whether related to a Direct Appointment Procedure (Rule 137-048-0200), the Informal Selection Procedure (Rule 137-048-0210), or the Formal Selection Procedure (Rule 137-048-0220), or reject all Proposals, responses to RFQs, responses to other preliminary Procurement documents, or any combination of the foregoing, if the Contracting Agency believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension or rejection, the Contracting Agency 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 either solicitations, RFQs or other preliminary Procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs or responses to other preliminary Procurement documents. In the event of any such cancellation, Contracting Agency shall return Proposals to Proposers and keep a list of returned Proposals in the Solicitation file, in accordance with ORS 279C.107.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279C.110

137-048-0260**Two-Tiered Selection Procedure when State Agency is Lead Contracting Agency**

(1) If the Contracting Agency requires an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for a public improvement owned and maintained by that Local Contracting Agency, and a State Agency will serve as the lead Contracting Agency and will enter into Contracts with Architects, Photogrammetrists, Transportation Planners, Engineers or Land Surveyors for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for that public improvement, the State Contracting Agency shall utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors.

(2) **Tier One.** The State Contracting Agency shall, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP pursuant to its own rules or, if permitted by state, by these Division 48 rules applicable selection procedures described in from among Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors, and shall notify the Local Contracting Agency of the Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors selected.

(3) **Tier Two.** In accordance with the qualifications-based selection requirements of ORS 279C.110, the Local Contracting Agency shall either:

(a) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor from the State Contracting Agency's list of Proposers to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement; or

(b) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement through an alternative process adopted by the Local Contracting Agency, consistent with the provisions of the applicable RFP, if any, and these division 48 rules. The Local Contracting Agency's alternative process must be described in the applicable RFP, may be structured to take into account the unique circumstances of the Local Contracting Agency and may include provisions to allow the Local Contracting Agency to perform its tier two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The Local Contracting Agency's alternative process may include, but is not limited to, one or more of the following methods:

(A) A general written direction from the Local Contracting Agency to the State Contracting Agency, prior to the advertisement of a Procurement or series of Procurements or during the course of the Procurement or series of Procurements, that the Local Contracting Agency's tier two selection shall be the highest-ranked firm identified by the State Contracting Agency during the tier one process, and that no further coordination or consultation with the Local Contracting Agency is required. However, the Local Contracting Agency may provide written notice to the State Contracting Agency that the Local Contracting Agency's general written direction is not to be applied for a particular Procurement and describe the process that the Local Contracting Agency will utilize for the particular Procurement. In order for a written direction from the Local Contracting Agency consistent with this subsection to be effective for a particular Procurement, it must be received by the State Contracting Agency with adequate time for the State Contracting Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the Procurement. In the event of a multiple award under the terms of the applicable Procurement, the written direction from the Local Contracting Agency may apply to the highest ranked firms that are selected under the terms of the Procurement document.

(B) An intergovernmental agreement between the Local Contracting Agency and the State Contracting Agency outlining the alternative process that the Local Contracting Agency has adopted for a Procurement or series of Procurements.

(C) Where multiple Local Government Agencies are involved in a two-tiered selection procedure, the Local Government Agencies may name one or more authorized representative(s) to act on behalf of all the Local Government Agencies, whether the Local Government Agencies are acting collectively or individually, to select the Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the tier two selection process. In the event of a multiple award under the terms of the applicable Procurement, the authorized representative(s) of the Local Contracting Agencies may act on behalf of the Local Contracting Agencies to select the highest ranked firms that are required under the terms of the Procurement document, as part of the tier two selection process.

(4) The State Contracting Agency shall thereafter begin Contract negotiations with the selected Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor in accordance with the negotiation provisions in Rule 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure) as applicable.

(5) Nothing in these division 48 rules should be construed to deny or limit a Local Contracting Agency's ability to enter into a Contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4), through a selection process established by that Local Contracting Agency.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C.110 & ORS 279C.125

137-048-0270

Price Agreements

(1) Contracting Agency may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, when the Contracting Agency cannot determine the precise quantities of those Services which the Contracting Agency will require over a specified time period.

(2) When establishing Price Agreements under this rule, a Contracting Agency shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with Rule 137-048-0130(1) or 137-048-0130(2), as applicable. Contracting Agency may select a single Consultant, when a Price Agreement is awarded to obtain services for a specific Project or a closely-related group of Projects.

(3) Solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services must:

(a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a prospective bidder or Proposer to decide whether to submit a bid or proposal;

(b) Specify whether the Contracting Agency intends to award a Price Agreement to one Consultant or to multiple Consultants. If the Contracting Agency will award a Price Agreement to more than one Consultant, the solicitation document and Price Agreement shall describe the criteria and procedures the Contracting Agency will use to select a Consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at the Contracting Agency's sole discretion. In accordance with Rule 137-048-0130(2) applicable to Related Services procurements, the selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or a combination of both qualifications and pricing information. Pricing information requested for Price Agreements with any Division 48 Consultant may include the number of hours proposed for the services required, expenses, hourly rates, the number of hours, overhead and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of Rule 137-048-0200; and

(c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the Price Agreement.

(4) All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services assigned under a Price Agreement require a written work order or task order issued by the Contracting Agency. Any work orders or task orders assigned under a Price Agreement must include, at a minimum, the following:

(a) A clearly defined statement of work and performance schedule for any deliverables;

(b) The payment methodology, Consultant rates and number of hours, and a maximum, not-to-exceed price for the services required under the work order or task order that is fair and reasonable to the Contracting Agency, as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the services; and

- (c) Language that incorporates all applicable terms and conditions of the Price Agreement into the work order or task order; and
- (d) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065, ORS 279C.110 & ORS 279C.120

POST-SELECTION CONSIDERATIONS

137-048-0300

Prohibited Payment Methodology; Purchase Restrictions

- (1) Except as otherwise allowed by law, Contracting Agency shall not enter into any Contract which includes compensation provisions that expressly provide for payment of:
- (a) Consultant's costs under the Contract plus a percentage of those costs; or
 - (b) A percentage of the Project construction costs or total Project costs.
- (2) Except as otherwise allowed by law, Contracting Agency shall not enter into any Contract in which:
- (a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel working on the Project and reimbursable expenses incurred during the performance of work on the Project (sometimes referred to as a "time and materials" Contract); and
 - (b) The Contract does not include a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract.
- (3) Except in cases of Emergency or in the particular instances noted in the subsections below, Contracting Agency shall not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for Contracting Agency from any Consultant under a Contract with Contracting Agency to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:
- (a) The Consultant is providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under a Contract with a Contracting Agency to perform Design-Build services or Energy Savings Performance Contract services (see Rules 137-049-0670 and 137-049-0680); or
 - (b) That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to the Consultant pursuant to applicable law governing the award of such a Contract.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.105

137-048-0310

Expired or Terminated Contracts; Reinstatement

- (1) If Contracting Agency enters into a Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and that Contract subsequently expires or is terminated, the Contracting Agency may proceed as follows, subject to the requirements of subsection (2) of this rule:
- (a) Expired Contracts. If the Contract has expired as the result of Project delay caused by the Contracting Agency or caused by any other occurrence outside the reasonable control of the Contracting Agency or the Consultant, and if no more than one year has passed since the Contract expiration date, the Contracting Agency may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract to reflect any material alteration of the Project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the amendment, the Contracting Agency and the Consultant shall continue performance under the Contract as amended; or
 - (b) Terminated Contracts. If Contracting Agency or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the Contracting Agency may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering and Land Surveying Services, or Related Services not completed under the original Contract, or to perform any remaining Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services not completed under the Contract as adjusted to reflect a material alteration of the Project.
- (2) The Contracting Agency may proceed under either subsection (1)(a) or subsection (1)(b) of this rule only after making written findings that amending the existing Contract or entering into a new Contract with the Consultant will:
- (a) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency;

- (b) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement process by not encouraging favoritism or substantially diminishing competition in the award of Contracts; and
- (c) Result in a Contract that is still within the scope of the final form of the original Procurement document.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.110

137-048-0320

Contract Amendments

(1) A Contracting Agency may amend any Contract if the Contracting Agency, in its sole discretion, determines that the amendment is within the scope of the Solicitation Document and that the amendment would not materially impact the field of competition for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the final form of the original Procurement document. In making this determination, the Contracting Agency 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 Document if the Contracting Agency reasonably believes that the number of Proposers would not significantly increase if the Procurement document were re-issued to include the additional services.

(2) The Contracting Agency may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, which affect performance of the original Contract.

(3) All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and the Contracting Agency and must receive all required approvals before the amendments will be binding on the Contracting Agency.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.110

PUBLIC CONTRACTING RULES 2023

DIVISION 49

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES

137-049-0100

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. Rules that apply specifically to Public Improvement Contracts are so 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 of the Rules).

(3) These division 49 Rules become effective upon adoption, and apply to the Contracts described in section (1) above first advertised, but if not advertised then entered into, on or after that date.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-049-0110

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

137-049-0120

Definitions

(1) "**Conduct Disqualification**" means a Disqualification pursuant to ORS 279C.440.

(2) "**Disqualification**" means the preclusion of a Person from contracting with a Contracting Agency for a period of time in accordance with Rule 137-049-0370. Disqualification may be a Conduct Disqualification or DBE Disqualification.

(3) "**Foreign Contractor**" means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See Rule 137-049-0480.

(4) "**Notice**" means any of the alternative forms of public announcement of Procurements, as described in Rule 137-049-0210.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.110

137-049-0130

Competitive Bidding Requirement

A Contracting Agency shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required by these Rules, or 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 Rules 137-049-0600 to 137-049-0690 regarding the use of Alternative Contracting Methods and the exemption process.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

137-049-0140

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, other than Emergency Contracts regulated under ORS 279C.335(6) and Rule 137-049-0150, may be procured and amended as general trade services under the provisions of ORS Chapter 279B and division 47 Rules, rather than under the provisions of ORS Chapter 279C and these division 49 rules.

(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 through 870) for Public Works Contracts.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.320

137-049-0150

Emergency Contracts; Bidding and Bonding Exemptions

(1) **Emergency Declaration.** A Contracting Agency may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration shall be made at an administrative level consistent with the Contracting Agency's internal policies, by a written declaration that describes the circumstances creating the Emergency and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration shall thereafter be kept on file as a public record.

(2) **Competition for Contracts.** Pursuant to ORS 279C.320(1), Emergency Contracts are regulated under ORS 279B.080, which provides that, for an emergency procurement of construction services, the Contracting Agency shall ensure competition that is reasonable and appropriate under the Emergency circumstances, and may include written requests for Offers, oral requests for Offers or direct appointments without competition in cases of extreme necessity, in whatever solicitation time periods the Contracting Agency considers reasonable in responding to the Emergency.

(3) **Emergency Contract Scope.** Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

(4) **Emergency Contract Modification.** Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional work necessary and appropriate for related Emergency circumstances.

(5) **Excusing Bonds.** Pursuant to ORS 279C.380(4) and this rule, the Emergency declaration may also state that the Contracting Agency waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration the bonding requirements are excused for the procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. See Rule 137-049-0815 and BOLI rules at OAR 839-025-0015.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.080, ORS 279C.320 & ORS 279C.380

137-049-0160

Intermediate Procurements; Competitive Quotes and Amendments

(1) **General.** Public Improvement Contracts estimated by the Contracting Agency to cost \$25,000 or more, but not to exceed \$100,000 may be Awarded in accordance with this rule.

(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.** Contracting Agencies shall utilize written requests for quotes whenever reasonably practicable. Written request for quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote the Contracting Agency shall state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral requests for quotes may be utilized only in the event that Written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.

(4) **Number of Quotes; Record Required.** Contracting Agencies shall seek at least three competitive quotes, and keep a written record of the sources and amounts of the quotes received. If three quotes are not reasonably available the Contracting Agency shall make a written record of the effort made to obtain those quotes.

(5) **Award.** If Awarded, the Contracting Agency shall Award the Contract to the prospective contractor whose quote will best serve the interests of the Contracting Agency, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the Contracting Agency shall make a written record of the basis for Award.

(6) **Price Increases.** Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of Award by Contracting Agency issuance of a Change to the Work or Amendment, pursuant to Rule 137-049-0910, within the following limitations:

(a) Up to an aggregate Contract Price increase of 25% over the original Contract amount when a Contracting Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work, and;

(b) Up to an aggregate Contract Price increase of 50% over the original Contract amount, when a Contracting Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work and a Contracting Agency official, board or governing body with administrative or review authority over the contracting officer approves the increase.

(7) **Amendments.** Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in section (1) are specifically authorized by the Code, when made in accordance with this rule and Rule 137-049-0910. Accordingly, such amendments are not considered new procurements and do not require an exemption from competitive bidding.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.412.

FORMAL PROCUREMENT RULES

137-049-0200

Solicitation Documents; Required Provisions; Assignment or Transfer

(1) **Solicitation Document.** Pursuant to ORS 279C.365 and this rule, 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 Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(D) The name and title of the authorized Contracting Agency Person designated for receipt of Offers and contact Person (if different);

(E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must 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 or electronic means (See Rule 137-049-0300 regarding facsimile Bids or Proposals and Rule 137-049-0310 regarding electronic Procurement);

(F) The time, date and place of Opening;

(G) The time and date of Closing after which a Contracting Agency will not accept Offers, which time shall be not less than five Days after the date of the last publication of the advertisement. Although a minimum of five Days is prescribed, Contracting Agencies are encouraged to use at least a 14 Day Solicitation period when feasible. If the Contracting Agency is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, the Contracting Agency shall designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and Rule 137-049-0360. For timing issues relating to Addenda, see Rule 137-049-0250;

(H) The office where the Specifications for the Work may be reviewed;

(I) A statement that each Bidder to an ITB must 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 Contracting Agency 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, 279C.840 or 40 U.S.C. 3141 to 3148.";

(K) A statement that the Contracting Agency will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered and in good standing with the Construction Contractors Bd, or is licensed by the State Landscape Contractors Bd, as specified in Rule 137-049-0230;

(L) Whether a Contractor or a subcontractor under the Contract must 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). (See Rule 137-049-0440(3));

(N) How the Contracting Agency will notify Offerors of Addenda and how the Contracting Agency will make Addenda available (See Rule 137-049-0250); and

(O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in Rule 137-049-0360.

(P) Where applicable, a statement requiring compliance with ORS 279C.527, green energy technology.

(b) Evaluation Process:

(A) A statement that the Contracting Agency may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, including the requirement to demonstrate the Bidder's responsibility under ORS 279C.375(3)(b) and may reject for good cause all Offers after finding that doing so is in the public's interest;

(B) The anticipated Solicitation schedule, deadlines, protest process and evaluation process, if any;

(C) Evaluation criteria, including the relative value applicable to each criterion, that the Contracting Agency 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 137-049-0620), along with the process the Contracting Agency will use to determine acceptability of the Work;

(i) If the Solicitation Document is an Invitation to Bid, the Contracting Agency shall set forth any special price evaluation factors 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 Contracting Agency has available concerning future use;

(ii) If the Solicitation Document is a Request for Proposals, the Contracting Agency shall refer to the additional requirements of Rule 137-049-0650 and 279C.400 to 279C.410; and

(c) Contract Provisions. The Contracting Agency shall include all Contract terms and conditions, including warranties, insurance and bonding requirements, that the Contracting Agency considers appropriate for the Public Improvement project. The Contracting Agency must 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) Payment of claims by public officers (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 Bd 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) Prevailing wage rates (ORS 279C.800 to 279C.870);

(O) BOLI Public Works bond (ORS 279C.830(3));

(P) Retainage (ORS 279C.550 to 279C.570);

(Q) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(R) Contractor's relations with subcontractors (ORS 279C.580);
 (S) Notice of claim (ORS 279C.605);
 (T) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and
 (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 Bd or licensed by the State Landscape Contractors Bd in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(2) **Assignment or Transfer Restricted.** Unless otherwise provided in the Contract, 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 Contracting Agency's prior Written consent. Unless otherwise agreed by the Contracting Agency in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Contracting Agency 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 Contracting Agency for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Contracting Agency otherwise agrees in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.110(4), ORS 279A.120, ORS 279C.365, ORS 279C.370, ORS 279C.390, ORS 279C.505 to 580, ORS 279C.605, ORS 305.385, ORS 468A.720, ORS 701.005 & ORS 701.055

137-049-0210

Notice and Advertising Requirements; Posting

(1) **Notice and Distribution Fee.** A Contracting Agency may furnish "Notice" 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 may indicate where, when, how and for how long the Solicitation Document may be obtained; generally describe the Public Improvement project or Work; and may contain any other appropriate information. The Contracting Agency may charge a fee or require a deposit for the Solicitation Document. The Contracting Agency 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 the Contracting Agency's Procurements;
- (b) Placing Notice on the Contracting Agency's Electronic Procurement System; or
- (c) Placing Notice on the Contracting Agency's Internet Web site.

(2) **Advertising.** Pursuant to ORS 279C.360 and this rule, a Contracting Agency shall advertise every Solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless the exempted the Solicitation is otherwise exempt from the advertisement requirement under these rules or pursuant to a competitive bidding exemption adopted under ORS 279C.335.

(a) Unless the Contracting Agency publishes by Electronic Advertisement as permitted under subsection 2(b), the Contracting Agency shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the Contracting Agency may determine to be necessary or desirable to foster and promote competition.

(b) Contracting Agency may publish by Electronic Advertisement if the Contract Review Authority for the Contracting Agency determines that Electronic Advertisement is likely to be cost effective and, pursuant to 137-049-0310(2), adopts rules authorizing Electronic Advertisement.

(c) In addition to the Contracting Agency's publication required under subsection 2(a) or 2(b), the Contracting Agency shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.

(d) All advertisements for Offers shall set forth:

- (A) The Public Improvement project;
- (B) The office or website where Contract terms, conditions and Specifications may be reviewed;
- (C) The date that Persons must file applications for prequalification under ORS 279C.430, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;
- (D) The scheduled Closing, which shall not be less than five Days after the date of the last publication of the advertisement;
- (E) The name, title and address of the Contracting Agency Person authorized to receive Offers;
- (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

137-049-0220

Prequalification of Offerors

(1) **Prequalification.** Pursuant to ORS 279C.430 and this rule, two types of prequalification are authorized:

(a) **Mandatory Prequalification.** A Contracting Agency may require mandatory prequalification of Offerors on forms prescribed by the Contracting Agency's Contract Review Authority. The Contracting Agency shall determine prequalification status in accordance with 279C.430. A Contracting Agency must indicate in the Solicitation Document if it will require mandatory prequalification and establish the time for submitting the prequalification application. Mandatory prequalification is when a Contracting Agency conditions a Person's submission of an Offer upon the Person's prequalification. The Contracting Agency shall not consider an Offer from a Person that is not prequalified if the Contracting Agency required prequalification.

(b) **Permissive Prequalification.** A Contracting Agency may prequalify a Person for the Contracting Agency's Solicitation list on forms prescribed by the Contracting Agency's Contract Review Authority, but in permissive prequalification the Contracting Agency shall not limit distribution of a Solicitation to that list.

(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 other Contracting Agencies.

(3) **Standards for Prequalification.** A Person may prequalify by demonstrating to the Contracting Agency's satisfaction:

(a) That the Person's financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;

(b) The Person's record of performance;

(c) The Person's record of integrity;

(d) The Person is qualified to contract with the Contracting Agency.

(See, Rule 137-049-0390(2) regarding standards of responsibility.)

(4) **Notice of Denial.** If a Person fails to prequalify for a mandatory prequalification, the Contracting Agency shall notify the Person, specify the reasons under section (3) of this rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.430 & ORS 279C.435

137-049-0230

Eligibility to Bid or Propose; Registration or License

(1) **Construction Contracts.** A Contracting Agency 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 Bd at the time the Offer is made.

(2) **Landscape Contracts.** A Contracting Agency 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 contractor's license issued pursuant to ORS 671.560 by the State Landscape Contractors Bd at the time the offer is made.

(3) **Noncomplying Entities.** The Contracting Agency 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

137-049-0240

Pre-Offer Conferences

(1) **Purpose.** A Contracting Agency 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 Contracting Agency 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 a Contracting Agency 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 Contracting Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Contracting Agency confirms such statements with a Written Addendum to the Solicitation Document.

(5) **Contracting Agency Announcement.** The Contracting Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with Rule 137-049-0200(1)(a)(B).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365 & ORS 279C.370

137-049-0250

Addenda to Solicitation Documents

(1) **Issuance; Receipt.** The Contracting Agency 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 Contracting Agency otherwise specifies in the Addenda or in the Solicitation Document.

(2) **Notice and Distribution.** The Contracting Agency shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in Rule 137-049-0210(1). The Solicitation Document shall specify how the Contracting Agency will provide notice of Addenda and how the Contracting Agency will make the Addenda available (see Rule 137-049-0200(1)(a)(N)). For example, "Contracting Agency will not mail notice of Addenda, but will publish notice of any Addenda on Contracting Agency's Web site. Addenda may be downloaded off the Contracting Agency's Web site. Offerors should frequently check the Contracting Agency's Web site 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 Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the Contracting Agency shall not issue Addenda less than 72 hours 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 137-049-0260, by the close of the Contracting Agency's 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 137-049-0260, whichever date is later. The Contracting Agency shall consider only an Offeror's request for change or protest to the Addendum; the Contracting Agency 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 the Contracting Agency's receipt of request for change or protests as set forth in Rule 137-049-0260(2) and (3).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.395 & ORS 279A.065

137-049-0260

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 Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency 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 must deliver the Written request for change to the Contracting Agency not less than 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 must deliver a Written protest on those matters to the Contracting Agency not less than 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) **Contracting Agency Response.** The Contracting Agency is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The Contracting Agency shall provide notice to the applicable Person if it entirely rejects a protest. If the Contracting Agency agrees with the Person's request or protest, in whole or in part, the Contracting Agency shall either issue an Addendum reflecting its determination under Rule 137-049-0260 or cancel the Solicitation under Rule 137-049-0270.

(5) **Extension of Closing.** If a Contracting Agency receives a Written request for change or protest from an Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency 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 279C.365

137-049-0270**Cancellation of Solicitation Document**

(1) **Cancellation in the Public Interest.** A Contracting Agency may cancel a Solicitation for good cause if the Contracting Agency finds that cancellation is in the public interest. The Contracting Agency's reasons for cancellation shall be made part of the Solicitation file.

(2) **Notice of Cancellation.** If the Contracting Agency cancels a Solicitation prior to Opening, the Contracting Agency shall provide Notice of cancellation in accordance with Rule 137-049-0210(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 Contracting Agency cancels a Solicitation prior to Offer Opening, the Contracting Agency 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 Contracting Agency shall open the Offer to determine the source and then return it to the Offeror.

(b) **After Offer Opening.** If the Contracting Agency rejects all Offers, the Contracting Agency shall retain all such Offers as part of the Contracting Agency's Solicitation file.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.395

137-049-0280**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 Solicitations, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in Rule 137-049-0410. The Contracting Agency's 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 137-049-0410, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document with Proposer. See Rule 137-049-0650 on Requests for Proposals and Rule 137-049-0290 on Bid or Proposal Security.

(2) **Responsive Offer.** A Contracting Agency 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 137-049-0650, an Offeror shall not make an Offer contingent upon the Contracting Agency's 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 137-049-0650, 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 Contracting Agency 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 Opening 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 Contracting Agency with all documents and descriptive literature required under the Solicitation Document.
- (8) **Facsimile or Electronic Submissions.** If the Contracting Agency permits facsimile or electronic Offers in the Solicitation Document, the Offeror may submit facsimile or electronic Offers in accordance with the Solicitation Document. The Contracting Agency shall not consider facsimile or electronic Offers unless authorized by the Solicitation Document.
- (9) **Product Samples and Descriptive Literature.** A Contracting Agency 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 Contracting Agency 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 Contracting Agency, whichever is applicable.
- (b) The Contracting Agency 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 the Contracting Agency 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

137-049-0290

Bid or Proposal Security

- (1) **Security Amount.** If a Contracting Agency 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 Contracting Agency shall not use Bid or Proposal security to discourage competition. The Contracting Agency shall clearly state any Bid or Proposal security requirements in its Solicitation Document. 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 and any required proof of insurance. See ORS 279C.365(4) and ORS 279C.385.
- (2) **Requirement for Bid Security (Optional for Proposals).** Unless a Contracting Agency has otherwise exempted a Solicitation or class of Solicitations from Bid security pursuant to ORS 279C.390, the Contracting Agency shall require Bid security for its Solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than \$100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than \$50,000. See ORS 279C.365(5). The Contracting Agency may require Bid security even if it has exempted a class of Solicitations from Bid security. Contracting Agencies may also require Proposal security in RFPs. See ORS 279C.400(5).
- (3) **Form of Bid or Proposal Security.** A Contracting Agency may accept only the following forms of Bid or Proposal security:
- (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.** A Contracting Agency shall return or release the Bid or Proposal security of 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 Contracting Agency 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 lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.385 & ORS 279C.390

137-049-0300

Facsimile Bids and Proposals

(1) **Contracting Agency Authorization.** A Contracting Agency may authorize Offerors to submit facsimile Offers. If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency shall not authorize facsimile Offers unless the Contracting Agency has established a method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Contracting Agency shall determine that the Contracting Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Contracting Agency 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 the Contracting Agency authorizes a facsimile Offer for Bids or Proposals, the Contracting Agency shall include in the Solicitation Document (other than in a request for quotes) the following:

- (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 Contracting Agency 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 must 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 Contracting Agency reserves the right to Award the Contract solely on the basis of the facsimile Offer. However, upon the Contracting Agency's request the apparent successful Offeror shall promptly submit its complete original Signed Offer.";
- (e) The data and compatibility characteristics of the Contracting Agency'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 Contracting Agency 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

137-049-0310

Electronic Procurement

(1) **General.** Contracting Agencies may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1) and Rule 137-049-0210(2)(b), provided that advertisement of such Contracts with an estimated Contract Price in excess of \$125,000 must also be published in a trade newspaper of general statewide circulation, and may post notices of intent to Award electronically as provided by ORS 279C.410(7).

(2) **Alternative Procedures.** In the event that a Contracting Agency desires to direct or permit the submission and receipt of Offers for a Public Improvement Contract by electronic means, as allowed under ORS 279C.365(1)(d), it shall first promulgate supporting procedures substantially in conformance with Rule 137-047-0330 (Electronic Procurement under ORS Chapter 279B), taking into account ORS Chapter 279C

requirements for written bids, opening bids publicly, bid security, first-tier subcontractor disclosure and inclusion of prevailing wage rates.

(3) **Interpretation.** Nothing in this rule shall be construed as prohibiting Contracting Agency from making procurement documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365

137-049-0320

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 to the Contracting Agency in accordance with Rule 137-049-0280, unless otherwise specified in the Solicitation Document. Any modification must 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 Contracting Agency 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 Contracting Agency 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 Contracting Agency shall include all documents relating to the modification or withdrawal of Offers in the appropriate Solicitation file.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.360(2), ORS 279C.365, ORS 279C.375 & ORS 279C.395

137-049-0330

Receipt, Opening and Recording of Offers; Confidentiality of Offers

(1) **Receipt.** A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer").

(2) **Opening and Recording.** A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to Rule 137-049-0320. In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, the Bid price(s), and such other information as the Contracting Agency considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

(3) **Availability.** After Opening, the Contracting Agency shall make Bids available for public inspection, but, pursuant to ORS 279C.410, Proposals are not subject to disclosure until after notice of intent to award is issued. In any event, Contracting Agencies 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 the Contracting Agency determines such designation is not in accordance with applicable law, the Contracting Agency shall make those portions 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

137-049-0340**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. A Contracting Agency shall not consider late Offers, withdrawals or modifications except as permitted in Rules 137-049-0350 or 137-049-0390.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.375 & ORS 279C.395

137-049-0350**Mistakes**

(1) **Generally.** To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, a Contracting Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) **Contracting Agency Treatment of Mistakes.** A Contracting Agency shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Contracting Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Contracting Agency may take the following action:

(a) A Contracting Agency 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) A Contracting Agency 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 Contracting Agency'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) A Contracting Agency 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 Contracting Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency 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 Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) **Rejection for Mistakes.** The Contracting Agency 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

137-049-0360

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 Contracting Agency to exceed \$100,000, all Bidders shall submit to the Contracting Agency 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 Contracting Agency shall:

- (a) Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, 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 by the Contracting Agency.

(3) **Bidder Instructions and Disclosure Form.** For the purposes of this rule, a Contracting Agency in its Solicitation shall:

- (a) Prescribe the disclosure form that must 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 estimated by the Contracting Agency to be 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 must 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.

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 accompanying form.

THE CONTRACTING AGENCY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see Rule 137-049-0360)."

(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 ORS 279C.370 and 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) **Contracting Agency Role.** Contracting Agencies shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this rule. Contracting Agencies shall also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. Contracting Agencies are not 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. Contracting Agencies shall accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, Contracting Agencies

do 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

137-049-0370

Disqualification of Persons

(1) **Authority.** A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (2) and (4) of this rule.

(a) Standards for Conduct Disqualification. As provided in ORS 279C.440, a Contracting Agency 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 Contracting Agency to be so serious as to justify Conduct Disqualification. A violation under this subsection 1(a)(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.

(b) Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, a Contracting Agency may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g. subcontractors) as follows:

(A) For a DBE Disqualification under ORS 200.065, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a veteran, as defined by ORS 200.005, owns; or

(ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Person has been disqualified by another Contracting Agency pursuant to ORS 200.065.

(B) For a DBE Disqualification under ORS 200.075, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person has entered into an agreement representing that a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a veteran, as defined by ORS 200.005, owns, certified under ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

(ii) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or

(iii) The Person uses a Certified Enterprise to perform services under a contract or to provide supplies under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the contract.

(iv) If a Person is Disqualified for a DBE Disqualification under ORS 200.075, the affected Contracting Agency shall not permit such Person to participate in that Contracting Agency's Contracts.

(C) For a DBE Disqualification under ORS 279A.110, a Contracting Agency may disqualify a Person if the Contracting Agency finds that the Person discriminated against a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a veteran, as defined by ORS 200.005, owns in awarding a subcontract under a Contract with that Contracting Agency.

(2) **Notice of Intent to Disqualify.** The Contracting Agency 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 Contracting Agency intends to disqualify 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 Contracting Agency 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 of the authority and jurisdiction under which the hearing will be held;
 - (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.
- (3) **Hearing.** The Contracting Agency shall schedule a hearing upon the Contracting Agency receipt of the Person's timely hearing request. Within a reasonable time prior to the hearing, the Contracting Agency 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.
- (4) **Notice of Disqualification.** The Contracting Agency 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 or a DBE Disqualification under ORS 279A.110, the disqualified person must notify the Contracting Agency in Writing within three business Days after receipt of the Contracting Agency's notice of Disqualification if the Person intends to appeal the Contracting Agency's decision.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 200.065, ORS 200.075, ORS 279A.110, ORS 279C.440, ORS 279C.445 & ORS 279C.450

137-049-0380

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 137-049-0390, and Rules for Alternative Contracting Methods at Rules 137-049-0600 to 137-049-0690.
- (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 Contracting Agency 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 Contracting Agency, 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 Contracting Agency, for the purpose of comparing Bids. Contracting Agencies shall specify within the Solicitation Document the estimated quantity of the procurement to be used for determination of the low Bidder. 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 137-049-0350(2)(b).
- (3) **Proposal Evaluation Criteria.** If the Contracting Agency's Contract Review Authority has exempted the Procurement of a Public Improvement from the competitive bidding requirements of ORS 279C.335(1), and has directed the Contracting Agency to use an Alternative Contracting Method under ORS 279C.335(4), the Contracting Agency shall set forth the evaluation criteria in the Solicitation Documents. See Rules 137-049-0650, 137-049-0650, ORS 279C.335 and 279C.405.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

137-049-0390

Offer Evaluation and Award; Determination of Responsibility

- (1) **General.** If Awarded, the Contracting Agency 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, see ORS 279C.375(3)(a), or is ineligible for Award as a Nonresident (as defined in ORS 279A.120) education service district (ORS 279C.325). The Contracting Agency 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, ORS 279C.375(5) permits multiple Contract awards 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 Contracting Agency must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the Contracting Agency must determine that the Offeror:

- (a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;
- (b) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency 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 Contracting Agency 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 Contracting Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;
- (c) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency 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 137-049-0370 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;
- (d) Is legally qualified to contract with the Contracting Agency;
- (e) Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the Work specified in the Contract;
- (f) Is covered by liability insurance and other insurance in amounts the Contracting Agency requires in the Solicitation Documents;
- (g) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128;
- (h) Has made the disclosure required under ORS 279C.370; and
- (i) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning responsibility, the Contracting Agency shall base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

(3) **Documenting Agency Determinations.** Contracting Agencies shall document their 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) **Contracting Agency Evaluation.** The Contracting Agency shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Contracting Agency shall not evaluate an Offer using any other requirement or criterion.

(5) **Offeror Submissions.**

- (a) The Contracting Agency 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 Contracting Agency shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The Contracting Agency shall reject an Offer providing any product that does not meet the Solicitation Document requirements. A Contracting Agency's 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 Contracting Agency shall use only objective criteria to evaluate Bids as set forth in the ITB. The Contracting Agency shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

- (a) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall, in accordance with Rule 137-046-0310, 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 Contracting Agency 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 must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.
- (c) Negotiation Prohibited. Except as allowed by Rules 137-049-0420(1) and 137-049-0430, the Contracting Agency shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.
- (7) **Evaluation of Proposals.** See Rule 137-049-0650 regarding rules applicable to Requests for Proposals.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279C.365, ORS 279C.375 & ORS 279C.395

137-049-0395

Notice of Intent to Award

- (1) **Notice.** At least seven days before the Award of a Public Improvement Contract, unless the Contracting Agency determines that seven days is impractical and documents its reasons therefore in the procurement file, the Contracting Agency shall issue to each Bidder (pursuant to ORS 279C.375(2)) and each Proposer (pursuant to ORS 279C.410(7)), or post, electronically or otherwise, a notice of the Contracting Agency's intent to Award the Contract. This requirement does not apply to Award of a small, intermediate (informal competitive quotes) or emergency Public Improvement Contract awarded under ORS 279C.335(1)(c) or (d) or (6).
- (2) **Form and Manner of Posting.** The form and manner of posting notice shall conform to customary practices within the Contracting Agency's procurement system, and may be made electronically.
- (3) **Finalizing Award.** The Contracting Agency's Award shall not be final until the later of the following:
- Seven Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or
 - The Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the Award.
- (4) **Prior Notice Impractical.** Posting of notice of intent to award shall not be required when the Contracting Agency determines that it is impractical due to unusual time constraints in making prompt Award for its immediate procurement needs, documents the Contract file as to the reason for the determination, and posts notice of that action as soon as reasonably practical.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375

137-049-0400

Documentation of Award; Availability of Award Decisions

- (1) **Basis of Award.** After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's Solicitation file.
- (2) **Contents of Award Record for Bids.** The Contracting Agency's record shall include:
- All submitted Bids;
 - Completed Bid tabulation sheet; and
 - 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 137-049-0650, the Contracting Agency's record shall include:
- All submitted Proposals.
 - The completed evaluation of the Proposals;
 - Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and
 - If the Contracting Agency permitted negotiations in accordance with Rule 137-049-0650, the Contracting Agency's completed evaluation of the initial Proposals and the Contracting Agency's completed evaluation of final Proposals.
- (4) **Contract Document.** The Contracting Agency 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 the Contracting Agency shall provide tabulations of Awarded Bids or evaluation summaries of Proposals for a nominal charge which may be payable in advance. Requests must contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. Contracting Agencies may also provide tabulations

of Bids and Proposals Awarded on designated Web sites or on the Contracting Agency's Electronic Procurement System.

(6) **Availability of Solicitation Files.** The Contracting Agency shall make completed Solicitation files available for public review at the Contracting Agency.

(7) **Copies from Solicitation Files.** Any Person may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365 & ORS 279C.375

137-049-0410

Time for Contracting Agency Acceptance; Extension

(1) **Time for Offer Acceptance.** An Offeror's Bid, or Proposal submitted as a Firm Offer (see Rule 137-049-0280), 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.** A Contracting Agency may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Contracting Agency 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

137-049-0420

Negotiation With Bidders Prohibited

(1) **Bids.** Except as permitted by ORS 279C.340 and Rule 137-049-0430 when all bids exceed the cost estimate, a Contracting Agency shall not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the Contracting Agency and Contractor may modify the Contract only by change order or amendment to the Contract in accordance with Rule 137-049-0910.

(2) **Requests for Proposals.** A Contracting Agency may conduct discussions or negotiations with Proposers only in accordance with the requirements of Rule 137-049-0650.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.340 & ORS 279C.375

137-049-0430

Negotiation When Bids Exceed Cost Estimate

(1) **Generally.** In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the Contracting Agency's Cost Estimate, prior to Contract Award the Contracting Agency 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 Contracting Agency's Cost Estimate. The subcontractor disclosure and substitution requirements of Rule 137-049-0360 do not apply to negotiations under this rule.

(2) **Definitions.** The following definitions apply to this administrative rule:

(a) **"Cost Estimate"** means the Contracting Agency'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"** means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in Rule 137-049-0650, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.

(c) **"Project"** means a Public Improvement.

(d) **"Value Engineering"** means 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 Contracting Agency, shall be excluded from consideration.

(4) **Scope of Negotiations.** Contracting Agencies 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 Contracting Agency 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 Contracting Agency may discontinue negotiations at any time, and shall do so if it appears to the Contracting Agency 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 pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.

(7) **Public Records.** To the extent that a Bidder's records used in Contract negotiations under ORS 279C.340 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

137-049-0440

Rejection of Offers

(1) Rejection of an Offer.

(a) A Contracting Agency may 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 Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:

(A) Is contingent upon the Contracting Agency's 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 or goods that fail 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 Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279C.430 and the Contracting Agency 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 Bd, 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 section 3 of this rule;

(H) Is not Responsible. See Rule 137-049-0390(2) regarding Contracting Agency determination that the Offeror has met statutory standards of responsibility.

(2) **Form of Business.** For purposes of this rule, the Contracting Agency 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 137-049-0370.

(3) **Certification of Non-Discrimination.** The Offeror shall certify and deliver to the Contracting Agency Written certification, as part of the Offer that the Offeror has not discriminated and will not discriminate against any disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or business that a veteran, as defined by ORS 200.005, owns in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

(4) **Notice.** Contracting Agency need not provide an Offeror with any notice in the event that its Offer is rejected. However, Contracting Agency will provide all Offerors with a Notice of Intent to Award, as required, pursuant to Rule 137-049-0395.

(5) **Rejection of all Offers.** A Contracting Agency may reject all Offers for good cause upon the Contracting Agency's Written finding it is in the public interest to do so. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(6) **Criteria for Rejection of All Offers.** The Contracting Agency 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) The Contracting Agency cancels the Solicitation in accordance with Rule 137-049-0270; 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 279A.105, ORS 279A.110, ORS 279C.375, ORS 279C.380 & ORS 279C.395,

137-049-0450

Protest of Contractor Selection, Contract Award

(1) **Purpose.** An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the Contracting Agency's Contractor selection or Contract Award decision. These administrative remedies apply to all public contracts awarded by Contracting Agency, including those awarded pursuant to an intermediate procurement.

(2) **Notice of Competitive Range.** Unless otherwise provided in the RFP, under Rule 137-049-0650, the Contracting Agency shall provide Written notice to all Proposers of the Contracting Agency's determination of the Proposers included in the Competitive Range. The Contracting Agency's notice of the Proposers included in the Competitive Range shall not be final until the later of the following:

- (a) Seven (7) Days after the date of the notice, unless otherwise provided therein; or
- (b) Until the Contracting Agency 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 Contracting Agency shall provide Written notice to all Offerors of the Contracting Agency's intent to Award the Contract, as provided in Rule 137-049-0395.

(4) **Right to Protest Award.**

(a) To protest an Award, an adversely affected or aggrieved Offeror must submit to the Contracting Agency a Written protest within seven (7) Days after issuance of the notice of intent to Award the Contract, or Award of a Contract, whichever occurs first, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest must be in Writing and must 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 must claim that all lower Bidders or higher-scored Proposers are ineligible for Award:

- (A) Because their Offers were nonresponsive; or
- (B) The Contracting Agency 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 the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

(d) The Contracting Agency 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 Contracting Agency's 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 Contracting Agency a Written protest of the Contracting Agency's decision to exclude the Proposer from the Competitive Range within seven 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 137-049-0650.)

(b) The Proposer's protest shall be in Writing and must 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 must 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) The Contracting Agency committed a substantial violation of a provision in the RFP or of an applicable Procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.

(d) The Contracting Agency 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 Contracting Agency's 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 head of the Contracting Agency, or such Person's designee, may settle or resolve a Written protest submitted in accordance with the requirements of this rule.

(7) **Decision.** If a protest is not settled, the head of the Contracting Agency, or such Person's designee, shall promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.

(8) **Award.** The successful Offeror shall promptly execute the Contract after the Award is final. The Contracting Agency shall execute the Contract only after it has obtained all applicable required documents and approvals.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375, ORS 279C.380, ORS 279C.385 & ORS 279C.460

137-049-0460

Performance and Payment Security; Waiver

(1) **Public Improvement Contracts.** Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of emergency under ORS 279C.380(4), or unless the Contracting Agency's Contract Review Authority 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 Contracting Agency a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than \$100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than \$50,000. See ORS 279C.380(5). Under ORS 279C.390(3)(b) the Director of the Oregon Department of Transportation may reduce the performance bond amount for contracts financed from the proceeds of bonds issued under ORS 367.620(3)(a). Also see Rule 137-049-0815 and BOLI rules at OAR 839-025-0015 regarding the separate requirement for a Public Works bond.

(2) **Other Construction Contracts.** A Contracting Agency 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.** The Contracting Agency shall accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e., the Contracting Agency may accept a cashier's check or certified check in lieu or all or a portion of the required performance bond if specified in the Solicitation Document). The payment bond must 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 must promptly furnish the required performance security upon the Contracting Agency's request. If the Offeror fails to furnish the performance security as requested, the Contracting Agency 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 Contracting Agency's discretion, the Offeror shall forfeit its Bid or Proposal security.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375, ORS 279C.380 & ORS 279C.390

137-049-0470**Substitute Contractor**

If the Contractor provided a performance bond, the Contracting Agency, in its sole discretion, 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 & ORS 279C.390

137-049-0490**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 Contracting Agency. The Contracting Agency Awarding the Contract shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.120

ALTERNATIVE CONTRACTING METHODS**137-049-0600****Purpose**

Rules 137-049-0600 to 137-049-0690 are intended to provide guidance to Contracting Agencies regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by a Contracting Agency's Contract Review Authority under ORS 279C.335. Alternative Contracting Methods include, but are not limited to, Design-Build, Energy Savings Performance Contract (ESPC) and Construction Manager/General Contractor (CM/GC) forms of contracting. To the extent any such Alternative Contracting Methods (with the exception of CM/GC) are utilized within the competitive bidding process set forth at ORS 279C.335(1), Rules 137-049-0600 to 137-049-0690 are advisory only and need not be followed.

Stat. Auth.: ORS 279C.335, ORS 279A.065 & ORS 351.086

Stats. Implemented: ORS 279C.335, ORS 279C.337, ORS 279A.065 & ORS 351.086

137-049-0610**Definitions for Alternative Contracting Methods**

The following definitions shall apply to these 137-049-0600 to 137-049-0690 rules, unless the context requires otherwise:

(1) "**Alternative Contracting Methods**" means innovative Procurement techniques for procuring or performing 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 services are 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 *and* CM/GC forms of contracting, which are specifically addressed in these 137-049-0600 to 137-049-0690 rules, as well as other developing techniques such as general "performance contracting" and "cost plus time" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(I)) and "qualifications plus project approach" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(II)). Procedural requirements are identified under these 137-049-0600 to 137-049-0690 rules, when a Contracting Agency uses an Alternative Contracting Method in a procurement that requires an exemption from competitive bidding under ORS 279C.335(2) or in an ESPC procurement that is excepted from competitive bidding under ORS 279.335(1).

(2) "**Construction Manager/General Contractor (or "CM/GC")**" has the meaning set forth in ORS 279C.332(2).

(3) **“Construction Manager/General Contractor Method (or “CM/GC Method)”** means the Alternative Method which involves a Contracting Agency’s selection of a CM/GC to perform CM/GC Services for a project or projects.

(4) **“Construction Manager/General Contractor Services (or CM/GC Services)”** has the meaning set forth in ORS 279C.332(3).

(5) **“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 Contracting Agency, and manages both design and construction. In this form of Contract, a single Person provides the Contracting Agency with all of the Personal Services and construction Work necessary to both design and construct the project.

(6) **“Guaranteed Maximum Price (or “GMP)”** has the meaning set forth in ORS 279C.332(4), pertaining to procurements for CM/GC Services. For Alternative Contracting Methods other than the CM/GC Method, “Guaranteed Maximum Price” (or “GMP”) means the total maximum price provided to the Contracting Agency by the Contractor and accepted by the Contracting Agency that includes all reimbursable costs and fees for completion of the Contract Work and any particularly identified contingency amounts, as defined by the Public Improvement Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.332, ORS 279C.335 & ORS 279A.065

137-049-0620

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 Contracting Agency rules. Use of Alternative Contracting Methods may be directed by a Contracting Agency’s Contract Review Authority as an exception to the prescribed Public Contracting practices in Oregon, and their use must be justified in accordance with the Code and these 137-049-0600 to 137-049-0690 rules. See Rule 137-049-0630 regarding required Findings and restrictions on class exemptions. Contracting Agency’s Contract Review Authority has duly adopted class exemptions for the use of Requests for Proposals (RFP) and ESPC forms of contracting and authorized Contracting Agency to approve use of these alternative solicitation and contracting methods in accordance with Rules 137-049-0600 to 137-049-0690, as applicable.

(2) **Post-Project Evaluation.** Per ORS 279C.355 the Contracting Agency shall 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 Contracting Agency’s best interest to use an Alternative Contracting Method. The evaluation must be delivered to the Contracting Agency’s Contract Review Authority within 30 Days of the date the Contracting Agency “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. The evaluation shall address:

(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 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.355 & ORS 351.086

137-049-0630

Findings, Notice and Hearing

(1) **“Cost Savings” and Other Substantial Benefits Factors.** When Findings are required under ORS 279C.335(2)(b) to exempt a Contract or class of Contracts from the competitive bidding requirements, the “substantial cost savings and other substantial benefits” criterion at 279C.335(2)(b) requires consideration of the type, cost and amount of the Contract and, to the extent applicable, the other factors set forth in 279C.335(2)(b). If a particular factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts, the local contract review board need not consider nor address that factor.

(2) **Required Information.** The statutory definition of “Findings” at ORS 279C.330(2), which applies to exemptions from competitive bidding under ORS 279C.335, means the justification for a Contracting

Agency's conclusion regarding the factors listed in both ORS 279C.335(2)(a) and either 279C.335(2)(b) or 279C.335(2)(c).

(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 and other substantial benefits" requirement may be addressed by a combination of:

(a) Specified Findings that address the factors and other information specifically identified by statute, including, but not limited to, an analysis or reasonable forecast of present and future cost savings and other substantial benefits; 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 and other substantial benefits" requirement in ORS 279C.335(2)(b), if an Alternative Contracting Method has not been previously used, Contracting Agency 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 the exemption "is unlikely to encourage favoritism" or "substantially diminish competition" may be addressed for Alternative Contracting Methods by specifying: (a) the manner in which an RFP process will be utilized; (b) that the Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method; (c) that competition will be encouraged; and (d) that Award will be made based upon identified selection criteria and an opportunity to protest that Award provided.

(5) **Class Exemptions.** In making the findings supporting a class exemption the Contracting Agency shall clearly identify the "class" with respect to its defining characteristics, pursuant to the requirements of ORS 279.335(3). Those characteristics shall include some combination of Project descriptions or locations, time periods, contract values, method of procurement, or other factors that distinguish the limited and related class of Projects from a Contracting Agency's overall construction program. The Contracting Agency may not identify a class solely by funding source, such as a particular bond fund, or by the method of procurement, but shall identify the class using characteristics that reasonably relate to the exemption criteria of ORS 279C.335(2).

(6) **Public Hearing.** Before final adoption of Findings exempting a Public Improvement Contract or class of Contracts from the requirement of competitive bidding, a Contracting Agency shall give notice and may hold a public hearing as required by ORS 279C.335(5). The hearing shall be for the purpose of receiving public comment on the Contracting Agency's draft Findings.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335 & ORS 279A.065

137-049-0640

General Alternative Contracting Procedures

(1) **Proposal Evaluation.** Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. 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 Contracting Agency;

(b) Treat all Proposals equitably; and

(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the Contracting Agency. 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 any factors required by ORS 279C.337 and OAR 137-049-0690.

(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.

(3) **Contract Negotiations.** Contract terms may be negotiated to the extent allowed by the RFP and Rules 137-049-0600 to 137-049-0690, 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 137-049-0650. 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 could affect the cost or quality of the Work. For the CM/GC Method, terms that may be negotiated also include the specific scope of pre-construction services, the GC Work, any Early Work and other construction Work to be performed by the CM/GC, and any other terms that the Contracting Agency has identified as being subject to negotiation, consistent with the requirements of OAR 137-049-0690. 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 Personal Services and Work 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 137-049-0680.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065 & ORS 351.086

137-049-0650

Requests for Proposals (RFP)

(1) Generally.

(a) Contracting Agency may utilize the following RFP process for public improvement contracts to allow flexibility in both proposal evaluation and contract negotiation, subject to ORS 279C.400 to 279C.410, Rules 137-049-0200 to 137-049-0480, and 137-049-0640 to 137-049-0660, unless other applicable statutes or rules control a Contracting Agency's use of competitive proposals for public improvement contracts.

(b) Contracting Agency 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. ORS 279C.410(9).

(2) **Solicitation Documents.** In addition to the Solicitation Document requirements of Rule 137-049-0200, Public Improvement Contract Requests for Proposals shall include:

(a) Whether Contracting Agency reserves the right to Award to and Contract with more than one Proposer.

(b) All evaluation factors that will be considered by the Contracting Agency when evaluating the proposals, including the relative importance of price and any other evaluation factors. Evaluation factors may include, but are not limited to, such considerations as 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.

(c) The method of contractor selection, which may include, but is not limited to, Award without negotiation, negotiation with the highest ranked Proposer, competitive negotiations, multiple-tiered competition designed to either 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 these methods;

(d) All required contractual terms and conditions. The Request for Proposals also may: (i) identify those contractual terms or conditions that Contracting Agency reserves, in the Request for Proposals, for negotiation with Proposers; (ii) request that Proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the Request for Proposals; and (iii) contain or incorporate the form and content of the contract that the Contracting Agency will accept, or suggested contract terms and conditions that nevertheless may be the subject of negotiations with Proposers.

(3) Evaluation of Proposals.

(a) Evaluation. The Contracting Agency shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Contracting Agency shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) Clarifications. In evaluating Proposals, a Contracting Agency may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.

(B) Limited Negotiation. If the Contracting Agency did not permit negotiation in its Request for Proposals, the Contracting Agency 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 outlined in subsections (5)(b) and (6) of this rule do not apply to this limited negotiation.

(b) Discussions; Negotiations. The Contracting Agency shall evaluate Proposals and, if applicable, establish the Competitive Range, before conducting discussions or negotiations in accordance with this rule.

(A) If the Solicitation Document provided that discussions or negotiations may occur at Contracting Agency's discretion, the Contracting Agency may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.

(B) If the Contracting Agency proceeds with discussions or negotiations, the Contracting Agency may establish a negotiation committee which may include members with legal, technical or negotiating expertise.
 (c) Cancellation/Rejection. Cancellation of the Solicitation or rejection of proposals shall be in accordance with ORS 279C.395.

(4) Competitive Range; Protest; Award.

(a) Determining Competitive Range.

(A) If the Contracting Agency does not cancel the Solicitation, after the Opening the Contracting Agency will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals and rank the Proposers in the Competitive Range.

(B) The Contracting Agency may increase the number of Proposers in the Competitive Range if the Contracting Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating that 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 Contracting Agency's evaluation of revised Proposals submitted in accordance with the process described in this rule.

(b) Notice/Protests. Notice of Competitive Range and Award, and associated protest rights will be as established in Rule 137-049-0450.

(c) After the protest period provided in accordance with Rule 137-049-0450 expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency may commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or 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.

(5) **Discussions; Revised Proposals**. If the Contracting Agency chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the Contracting Agency shall proceed as follows:

(a) Initiating Discussions. The Contracting Agency 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 Contracting Agency identified in the RFP as the subject of discussions. The Contracting Agency 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 Contracting Agency would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the Contracting Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The Contracting Agency 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 Contracting Agency may terminate discussions with any Proposer in the Competitive Range at any time. However, the Contracting Agency shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with Contracting Agency before the Contracting Agency notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.

(A) In conducting discussions, the Contracting Agency:

(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 Contracting Agency 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. If the Contracting Agency does not cancel the Solicitation at the conclusion of the Contracting Agency's discussions with all remaining Proposers in the Competitive Range, the Contracting Agency shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the Contracting Agency's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the Contracting Agency's notice.

(A) Upon receipt of the revised Proposals, the Contracting Agency shall score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the Contracting Agency's scoring.

(B) The Contracting Agency may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.

(d) Intent to Award; Protest. Written notice of intent to Award and associated protest rights are as established in Rule 137-049-0450. After the protest period expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency may commence final Contract negotiations.

(6) Negotiations.

(a) Initiating Negotiations. The Contracting Agency 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 Contracting Agency 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 authorized for negotiation in the Request for Proposals.

(c) Terminating Negotiations. The Contracting Agency may terminate negotiations with any Proposer at any time, if the Contracting Agency 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 Contracting Agency terminates negotiations with a Proposer, the Contracting Agency may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this rule until the Contracting Agency has either:

(A) Determined to Award the Contract to the Proposer with whom it is currently negotiating; or

(B) Completed at least one round of negotiations with all Proposers in the Competitive Range.

(7) Post Project Evaluation. For projects over \$100,000, Contracting Agency shall complete a post project evaluation in compliance with ORS 279C.355 and Rule 137-049-0620(3).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.400 to ORS 279C.410

137-049-0660

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 with a GMP or some other maximum price specified in the Contract may be negotiated.

(2) Economic incentives or disincentives may be included to reflect stated Contracting Agency purposes related to time of completion, safety or other Public Contracting objectives, including total least cost mechanisms such as life cycle costing.

(3) A Guaranteed Maximum Price (GMP) *may be* used as the pricing mechanism for CM/GC where a total Contract Price is provided in the design phase in order to assist the Contracting Agency in determining whether the project scope is within the Contracting Agency'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 Contracting Agency 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 Contracting Agency shall terminate the Contract. The public Contracting Agency 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 Contracting Agency 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

137-049-0670**Design-Build Contracts**

(1) **General.** The Design-Build form of contracting, as defined in Rule 137-049-0610(3), has technical complexities that are not readily apparent. Contracting Agencies 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 Contracting Agency must 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.** Contracting Agencies shall utilize the Design-Build form of contracting only in accordance with the requirements of these 137-049-0600 to 137-049-0690 rules. See particularly Rule 137-049-0620 on "Use of Alternative Contracting Methods" and Rule 137-049-0680 pertaining to ESPCs.

(3) **Selection.** Design-Build selection criteria may include those factors set forth above in Rule 137-049-0640(2)(a), (b) and (c).

(4) **QBS Inapplicable.** Because the value of construction services predominates the Design-Build form of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant services is not applicable.

(5) **Licensing.** If a Design-Build Contractor is not an Oregon licensed design professional, the Contracting Agency 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(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction services.

(6) **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 professional services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional 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.

(7) **Contract Requirements.** Contracting Agencies shall conform their Design-Build contracting practices to the following requirements:

- (a) **Design Services.** The level or type of design services required must 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 services to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.
- (b) **Professional Liability.** The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the Contracting Agency, as well as requirements for professional liability insurance.
- (c) **Risk Allocation.** The Contract shall clearly identify the extent to which the Contracting Agency 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 Contracting Agency 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 Contracting Agency 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

137-049-0680

Energy Savings Performance Contracts (ESPC)

(1) **Generally**. These 137-049-0600 to 137-049-0690 rules include a limited, efficient method for Contracting Agency to enter into ESPCs outside the competitive bidding requirements of ORS 279C.334. See ORS 279C.335(1)(f). If a Contracting Agency chooses not to utilize the ESPC Procurement method provided for by these 137-049-0600 to 137-049-0690 rules, the Contracting Agency 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 applicable to any Contracting Agency not subject to all the requirements of ORS 279C.335.

(2) **ESPC Contracting Method**. The ESPC form of contracting, as defined at Rule 137-049-0610(6), has unique technical complexities associated with the determination of what ECMs are feasible for the Contracting Agency, as well as the additional technical complexities associated with a Design-Build Contract. Contracting Agencies 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 Contracting Agency must be able to reasonably anticipate one 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, Measurement and Verification (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 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 team;
- (f) Integrating cost-effective Energy Conservation Measures (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 that is being performed under a separate remodeling Contract; and
- (h) Satisfying local energy efficiency design criteria or requirements.

(3) **Authority**. Contracting Agency may utilize the ESPC form of contracting only in accordance with the requirements of these 137-049-0600 to 137-049-0690 rules.

(4) **No Findings Required**. A Contracting Agency is only required to comply with the ESPC contracting procedures set forth in these 137-049-0600 to 137-049-0690 rules in order for the ESPC to be exempt from the competitive bidding process of ORS 279C.335. No Findings are required for an ESPC to be exempt from the competitive bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the Contracting Agency is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set forth in 137-049-0600 to 137-049-0690 of these rules.

(5) **Selection**. ESPC contracts may be directly awarded or solicited via an informal or formal RFP process. ESPC selection criteria may include those factors set forth above in Rule 137-049-0640(2)(a), (b), and (c). Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, prior to award, potential awardees must identify 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) **QBS Inapplicable**. Because the value of construction Work predominates in the ESPC method of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant services is not applicable.

(7) **Licensing**. If the ESCO is not an Oregon licensed design professional, the Contracting Agency 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 Work.

(8) **Performance Security.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and a payment bond, each for 100% of the full Contract Price, including the construction Work and design and related Personal Services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these “design and related services” include conventional design services, commissioning services, training services for the Contracting Agency’s operations and maintenance staff, and any similar Personal Services provided by the ESCO’s Energy Savings Guarantee are not included in these 279C.380(1)(a) “design and related services.” Nevertheless, a Contracting Agency 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 Contracting Agency so provides in the RFP.

(9) **Contracting Requirements.** Contracting Agencies 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 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 Contracting Agency, 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 Contracting Agency shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in Rule 137-040-0560(7) above.

(c) **Pricing Alternatives.** The Contracting Agency may utilize one 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, which 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 Work to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified 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 Contracting Agency, the ESCO’s M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the Contracting Agency’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 these 137-049-0600 to 137-049-0690 rules 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

137-049-0690

Construction Manager/General Contractor (CM/GC)

Contracting Agency shall use a Construction Manager/General Contractor (CM/GC) form of contracting, as defined in Rule 137-049-0610(3), only in accordance with ORS 279C.337 and OAR 137-049-0690.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 297C.335, ORS 279C.337 & ORS 279C.380(2)

CONTRACT PROVISIONS

137-049-0800

Required Contract Clauses

Contracting Agencies 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 137-049-0200(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

137-049-0810

Waiver of Delay Damages Against Public Policy

Contracting Agencies shall not place any provision in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from a Contracting Agency'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

137-049-0815

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 must 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. See BOLI rule at OAR 839-025-0015.

Stat. Auth. ORS 279A.065

Stats. Implemented: ORS 279C.830

137-049-0820

Retainage

(1) **Withholding of Retainage.** Except to the extent a Contracting Agency's enabling laws require otherwise, a Contracting Agency shall not retain an amount in excess of five percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the Contracting Agency may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Contracting Agency shall respond in Writing to all such applications within a reasonable time. When the Contract Work is 97-1/2 percent completed, the Contracting Agency may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. A Contracting Agency may at any time reinstate retainage. Retainage shall be included in the final payment of the Contract Price.

(2) **Form of Retainage.** Unless a Contracting Agency that reserves an amount as retainage finds in writing that accepting a bond, security, or other instrument described in part (a) or (b) of this section poses an extraordinary risk that is not typically associated with the bond, security, or instrument, the Contracting Agency, in lieu of withholding moneys from payment, shall accept from the Contractor:

(a) Bonds, securities or other instruments that are deposited and accepted as provided in subsection (4)(a) of this rule; or

(b) A surety bond deposited as provided in subsection (4)(b) of this rule.

(3) **Deposit in interest-bearing accounts.** Either upon election of the Contractor pursuant to ORS 279C.560(5) or as required when the Contract Price exceeds \$500,000 pursuant to ORS 279C.570(2), a Contracting Agency shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, or interest-bearing escrow account pursuant to ORS 279C.570(2). Earnings on such an account shall accrue to the Contractor from the date the Contractor's related payment request is fully approved by the Contracting Agency, until the date the retainage is paid to the Contractor. For purposes of this Section, a payment of retainage is deemed to be "paid" by a Contracting Agency when the payment is transmitted to the Contractor or otherwise applied against an obligation of the Contractor under the Contract.

(4) **Alternatives to cash retainage.** In lieu of cash retainage to be held by a Contracting Agency, the Contractor may substitute one of the following:

(a) Deposit of bonds, securities or other instruments:

(A) The Contractor may deposit bonds, securities or other instruments with the Contracting Agency or in any bank or trust company to be held for the benefit of the Contracting Agency. If the Contracting Agency accepts the deposit, the Contracting Agency shall reduce the cash retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds, securities or other instruments deposited or acquired in lieu of cash retainage must be of a character approved by the Oregon Department of Administrative Services, which may include, without limitation:

(i) Bills, certificates, notes or bonds of the United States.

(ii) Other obligations of the United States or agencies of the United States.

(iii) Obligations of a corporation wholly owned by the Federal Government.

(iv) Indebtedness of the Federal National Mortgage Association.

(v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.

(vii) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

(C) Upon the Contracting Agency's determination that all requirements for the protection of the Contracting Agency'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. A Contracting Agency, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Contracting Agency in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(5) **Recovery of Costs.** Pursuant to ORS 279C.560(3), a Contracting Agency may reduce the final

payment to recover from the Contractor all additional costs incurred as a result of Contractor's election to:

(i) submit an alternative to cash retainage pursuant to section (4) of this rule; or (ii) to deposit cash retainage in an interest-bearing account pursuant to section (3) of this rule for Contracts not in excess of \$500,000 by reducing the final payment.

(6) **Additional Retainage When Certified Payroll Statements Not Filed.** Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the Contracting Agency 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 Contracting Agency. The Contracting Agency 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 (but see ORS 279C.845(1) regarding the requirement for both contractors and subcontractors to file certified statements with the Contracting Agency). See BOLI rule at OAR 839-025-0010.

Stat. Auth.: ORS 279A.065 & ORS 279C.845

Stats. Implemented: ORS 279C.560, ORS 279C.570 & ORS 701.420

137-049-0830

Contractor Progress Payments

(1) **Request for progress payments.** Each month the Contractor shall submit to the Contracting Agency its Written request for a progress payment based upon an estimated percentage of Contract completion. At the Contracting Agency'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 Contracting Agency will make a progress payment to the Contractor, which shall be equal to: (i) the value of completed Work; (ii) less those amounts that have been previously paid; (iii) less other amounts that may be deductible or owing and due to the Contracting Agency for any cause; and (iv) less the appropriate amount of retainage.

(2) **Progress payments do not mean 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

137-049-0840

Interest

(1) **Prompt payment policy.** A Contracting Agency 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 Contracting Agency 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 Contracting Agency in Writing or otherwise in accordance with the Contract requirements.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.570

137-049-0850

Final Inspection

(1) **Notification of Completion; inspection.** The Contractor shall notify the Contracting Agency in Writing when the Contractor considers the Contract Work completed. Within 15 Days of receiving Contractor's notice, the Contracting Agency 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 Contracting Agency finds that all Work required under the Contract has been completed satisfactorily, the Contracting Agency shall acknowledge acceptance of the Work in Writing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.570(8)

137-049-0860

Public Works Contracts

(1) **Generally.** ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in 279C.800(6), 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) **Required Contract Conditions.** As detailed in the above statutes and rules, every Public Works Contract must contain the following provisions:

(a) Contracting Agency 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) A requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1). If both state and federal prevailing rates of wage apply, the contract and every subcontract must provide that all workers must be paid the higher of the applicable state or federal prevailing rate of wage.

(f) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).

(3) **Requirements for Specifications.** The Specifications for every Public Works Contract, consisting of the procurement package (such as the project manual, Bid or Proposal booklets, request for quotes or similar procurement Specifications), must contain the following provisions:

(a) The state prevailing rate of wage, and, if applicable, the federal prevailing rate of wage, as required by ORS 279C.830(1)(a):

(A) Physically contained within or attached to hard copies of procurement Specifications;

(B) Included by a statement incorporating the applicable wage rate publication into the Specifications by reference, in compliance with OAR 839-025-0020; or,

(C) 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.

(b) If both state and federal prevailing rates of wage apply, a requirement that the contractor shall pay the higher of the applicable state or federal prevailing rate of wage to all workers. See BOLI rules at OAR 839-025-0020 and 0035.

(c) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.800 – ORS 279C.870

137-049-0870

Specifications; Brand Name Products

(1) **Generally.** The Contracting Agency's 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 Contracting Agency 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 Contracting Agency 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

137-049-0880

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 (i) their performance; and (ii) 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 Contracting Agency at reasonable times and places, whether or not litigation has been filed as to such claims.

(2) **Inspection and Audit.** A Contracting Agency 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 must 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 Contracting Agency, and its authorized representatives, shall be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's Records, as provided in section 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

137-049-0890**Contracting Agency Payment for Unpaid Labor or Supplies**

(1) **Contract incomplete.** If the Contract is still in force, the Contracting Agency 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 a Contracting Agency 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 Contracting Agency shall not make payments to subcontractors or suppliers for Work already paid for by the Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.515

137-049-0900**Contract Suspension; Termination Procedures**

(1) **Suspension of Work.** In the event a Contracting Agency suspends performance of Work for any reason considered by the Contracting Agency 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, including a reasonable allowance for related overhead, 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 Contracting Agency suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this section (2), the Contracting Agency shall pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The Contracting Agency 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. No claim for loss of anticipated profits will be allowed.

(3) **Public interest termination by Contracting Agency.** A Contracting Agency 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 Contracting Agency unilaterally terminates the Contract for any reason considered by the Contracting Agency to be in the public interest.

(4) **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.

(5) **Remedies cumulative.** The Contracting Agency 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.

(6) Application of this rule does not apply to suspension of the work or termination of the Contract as a result of Contractor's violation of any provision of law or Contract term.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.650, ORS 279C.655, ORS 279C.660, ORS 279C.665 & ORS 279C.670

137-049-0910**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 Contracting Agency 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 Contracting Agency 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 for the changed work.

(2) **Changes Provisions.** Changes to the Work are anticipated in construction and, accordingly, Contracting Agencies shall include changes provisions in all Public Improvement Contracts that detail the

scope of the changes clause, provide pricing mechanisms, authorize the Contracting Agency 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 for their issuance by Contracting Agencies.

(3) **Change Order Authority.** Contracting Agencies may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations. Dollar limitations on Changes to the Work are not set by these Rules, but such changes are limited by the above definition of that term.

(4) **Contract Amendments.** Contract Amendments within the general scope of the original Procurement are not considered to be new Procurements and an exemption from competitive bidding is not required in order to add components or phases of Work reasonably related to the work described in the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

- (a) They are within the general scope of the original Procurement;
- (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 applicable legal requirements.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065, ORS 279C.335 & ORS 279C.400(1)

PUBLIC CONTRACTING RULES - 2023

CLASS EXEMPTIONS

E-1 Purpose and Statutory Authority

These rules establish classes of public contracts which are exempt from the formal competitive solicitation requirements of the Public Contracting Code. These exemptions may be used by Contracting Agency without additional findings of fact except as otherwise set forth herein. These exemptions are in addition to all contracting exemptions as set forth in the Code and Contracting Agency's Public Contracting Rules, Divisions 46, 47, 48, and 49. Additional contracts or classes of contracts may be expressly exempted from competitive solicitation requirements by ordinance or resolution of Contracting Agency pursuant to Contracting Agency Rules and ORS 279B.085 or 279C.335.

E-2 Advertising Contracts

Contracting Agency may purchase advertising without a competitive process, regardless of dollar value and including that intended for the purpose of giving public or legal notice.

E-3 Equipment Repair and Overhaul

Contracting Agency may enter into a public contract for the purchase of services, equipment or supplies for maintenance, repair or conversion of existing equipment, if required for efficient utilization of such equipment.

E-4 Contracts for Price Regulated Items

Contracting Agency may, regardless of dollar value and without competitive bidding, 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.

E-5 Copyrighted Materials

Contracting Agency may, without competitive bidding and regardless of dollar amount, purchase copyrighted materials if there is only one supplier available within a reasonable purchase area for such goods. Examples of copyrighted materials covered by this exemption may include, but are not necessarily limited to, new books, periodicals, workbooks, curriculum materials, reference materials, audio and visual media, and non-mass-marketed software.

E-6 Investment Contracts

Contracting Agency may, without competitive bidding, and regardless of dollar amount, contract for the purpose of the investment of public funds or the borrowing of funds by Contracting Agency when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter, or Constitution.

E-7 Requirements Contracts

(1) For purposes of this rule, "Requirements Contract" means a contract whereby the Contracting Agency has agreed to purchase as much of an identified Good or Service at a predetermined price as it requires to meet an anticipated need. Contracting Agency may enter into requirements contracts whereby it is agreed to purchase goods or services for an anticipated need at particular prices, provided the original contract is let by a competitive procurement process.

- (2) Purchase may also be made at prices established by a requirement contract or other agreement between another public body and a contractor, if the requirement contract was established by a competitive procurement process.
- (3) The term of any requirement contract, including renewals, shall not exceed five years.

E-8 Office Copier Purchases

- (1) Contracting Agency may enter into multiple requirements contracts for either the purchase, rental or lease of office copying equipment. Except for this multiple award exemption, such contracts shall otherwise conform to the requirements of Public Contracting Rule E-7.
- (2) In exercising this exemption, Contracting Agency shall fully consider the operating capabilities, limitations and cost of each brand or model and select the brand which will produce the best combination of performance and cost per copy for each application.

E-9 Manufacturer Direct Supplies

Contracting Agency may purchase goods directly from a manufacturer without a competitive solicitation process if a large volume purchase is required and the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s). Procurements of this type are made on a contract-by-contract basis, and are not requirements contracts.

E-10 Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt

Contracting Agency is exempt from formal competitive procurement requirements for the purchase of gasoline, diesel fuel, heating oil, lubricants and asphalts if Contracting Agency conducts an intermediate procurement and Contracting Agency awards the Contract to the Offeror offering the least expensive goods, and retains written justification for the purchase made.

E-11 Hazardous Material Removal; Oil Cleanup

Contracting Agency may enter into public contracts without competitive bidding, regardless of dollar amount, 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. Comprehensive cleanup rules are set forth at OAR 340-122-205 to 340-122-360. In exercising its authority under this exemption Contracting Agency shall:

- (a) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;
- (b) Make written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup;
- (c) Record the measures taken under subsection (a) of this section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected.

E-12 Insurance, Employee Benefit

Contracting Agency may purchase employee benefit insurance without a competitive solicitation process, regardless of dollar amount.

E-13 Medical and Laboratory Supplies

Contracting Agency is not required to purchase the following specified laboratory and medical supplies on the basis of a single award to the lowest responsible bidder, but instead may purchase different brands of the same item by awarding contracts, after competitive bidding, to the lowest responsible bidder for each brand. The laboratory and medical supplies affected by this rule include, but are not limited to:

- (1) Drugs, biologicals, blood fractions, and blood components;
- (2) Intravenous solutions and associated supplies for administration;
- (3) Microbiologicals, biochemicals, and diagnostic reagents;
- (4) Surgical dressings;
- (5) Heart valves;
- (6) E.E.G., E.K.G., electrodes, charts, and associated supplies;
- (7) Sterilizing wraps;
- (8) Catheters, medical tubes, and associated supplies;
- (9) Surgical and orthopedic instruments;
- (10) Hearing aids;
- (11) Pacemakers;
- (12) Dental supplies;
- (13) Laboratory small package chemicals;
- (14) Biology supplies; and
- (15) Therapeutic or cosmetic implants.

E-14 Concession Agreements

(1) A concession agreement is a contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from a site within a building or upon land owned or controlled by Contracting Agency, and under which the concessionaire makes payments to Contracting Agency based, in whole or in part, on the concessionaire's sales revenues. The term "concession agreement" does not include an agreement which is merely a flat-fee or per-foot rental, lease, license, permit, or other arrangement for the use of public property.

(2) Concession agreements are not required to be competitively bid. However, when it is in Contracting Agency's best interests to do so and in Contracting Agency's sole discretion, Contracting Agency may obtain competitive proposals for concession agreements using the procedures described in ORS 279B.060.

USED PERSONAL PROPERTY**E-15 Used Personal Property, Purchase of**

(1) Subject to the provisions of this rule, Contracting Agency may purchase used property or equipment without competitive bidding and without obtaining competitive quotes, if it has determined that the purchase will be unlikely to encourage favoritism or substantially diminish competition, and will either result in cost savings to Contracting Agency or the public, or otherwise promote the public interest in a manner that could not be realized by a formal competitive solicitation process.

(2) "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 Contracting Agency purchase. "Used personal property or equipment" generally does not include property or equipment if Contracting Agency was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(3) For purchases of used personal property or equipment, Contracting Agency shall, where feasible, obtain three competitive quotes, unless Contracting Agency has determined and documented that a purchase without obtaining competitive quotes will be unlikely to encourage favoritism or substantially diminish competition and will either result in substantial cost savings to Contracting Agency or the public, or otherwise promote public interest in a manner that could not be realized by a formal competitive solicitation process.

E-16 Surplus Personal Property, Disposition of

(1) Contracting Agency may dispose of surplus personal property by any means determined to be in the best interest of Contracting Agency, including but not limited to: transfer to other departments; donation to other government agencies, or non-profit organizations; negotiated or advertised sale; trade; auction; liquidation through commercially recognized third party liquidator; or destruction.

(2) Unless transfer or donation is otherwise exempt from public contracting, prior to surplus property, Contracting Agency must find that the chosen disposition will substantially promote the public interest in a manner that could not practicably be realized by a competitive solicitation process and either that the disposition will result in a cost savings to Agency or will probably result in a higher net return than if the property were sold by a competitive solicitation process.

(3) All items of personal property having a residual value of more than \$10,000 are subject to prior authorization of the Contract Review Authority.

PERSONAL SERVICES

E-17 Personal Services for Other than Architect, Engineer, Photogrammetrist, Transportation Planner, and Land Surveying Services

(1) Either the following procedures or those set forth in Contracting Agency's Public Contracting Rules, Division 47, will be used to retain the services of independent contractors, other than architects, engineers, land surveyors, or other professionals otherwise exempt from these Rules or the Code.

(2) Nothing in this section shall apply to the employment of regular Contracting Agency employees unless otherwise approved by the Contract Review Authority or its designee, or personal service contract.

(3) Unless otherwise approved by Contracting Agency, personal service contracts shall require the contractor to defend, indemnify, and hold harmless Contracting Agency, its officers, agents and employees from and against any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance thereunder and shall include a waiver of contractor's right to indemnification and defense under the Oregon Tort Claims Act.

(4) Unless otherwise approved by Contracting Agency, all personal service contracts shall contain a provision requiring the person or entity providing the service to obtain and maintain liability insurance coverage in at least Contracting Agency's tort liability limits, naming Contracting Agency as an additional named insured during the life of the contract.

(5) All personal service contracts shall contain all contract provisions mandated by State law. These provisions may be incorporated in the personal service contract by reference to State law, unless State law provides otherwise. Contracting Agency's Attorney's Office will prepare model contract provisions for use in Contracting Agency personal service contracts.

- (6) The following procedure shall be observed in the selection of personal service contractors:
- (a) For personal service contracts involving an anticipated fee of \$25,000 or less per annum, Contracting Agency may negotiate a contract for such services with any qualified contractor it selects.
 - (b) For personal service contracts involving an anticipated fee of more than \$25,000 per annum, Contracting Agency shall solicit at least three (3) prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, notify each prospective contractor in reasonable detail of the proposed assignment, and determine the prospective contractor's interest and ability to perform the proposed assignment.
 - (c) Contracting Agency may arrange for any or all interested prospective contractors to be interviewed for the assignment by an appropriate Contracting Agency employee or by an interview committee.
 - (d) Following a review of the qualifications and interview, where conducted, of the interested prospective contractors, Contracting Agency may select the prospective contractor, and shall prepare a personal service contract.
- (7) The above provisions regarding selection procedures do not apply to extensions, amendments, modifications or supplements to executed personal service contracts.
- (8) Criteria to be considered in the evaluation and selection of a personal service contractor may include, but is not limited to:
- (a) Total cost of services to Contracting Agency.
 - (b) Specialized experience in the type of work to be performed.
 - (c) Capacity and capability to perform the work, including any specialized services within the time limitations for the work.
 - (d) Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable.
 - (e) Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable.
 - (f) Any other factors relevant to the particular contract.
- (9) The selection procedures described in this section may be waived by Contracting Agency, in its discretion, where an emergency exists that could not have been reasonably foreseen which requires such prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of these selection procedures.
- (10) Contracting Agency or its designee is authorized to sign all personal service contracts, unless otherwise established by Contracting Agency policy.
- (11) Nothing contained in this section shall preclude Contracting Agency from complying with provisions of Federal or State law that require Contracting Agency to utilize a different selection or contracting procedure.

E-18 Liability Insurance Contracts

Contracts for insurance where either the annual or aggregate premium exceeds \$25,000 must be let using one of the following procedures:

- (1) Agent of Record: Contracting Agency may appoint a licensed insurance agent ("agent of record") to perform insurance services in connection with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the agent of record is given responsibility.

(a) Prior to the selection of an agent of record, Contracting Agency shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such a selection. Such efforts may include one or more of the following methods: direct mailed notice, publishing notice in a newspaper of general circulation, or posting notice on Contracting Agency's website. Any such notice shall generally describe the nature of the insurance that the Contracting Agency will require.

(b) Any appointment period shall not exceed five years. Agents may serve more than one appointment period. Agents must qualify for appointment prior to each period as if each appointment period were the first.

(c) In selecting an agent of record, Contracting Agency shall select the agent(s) most likely to perform the most cost-effective services.

(2) Specific Proposals for Insurance Contracts: Contracting Agency may solicit proposals from licensed insurance agents or licensed insurers for the purpose of acquiring specific insurance contracts subject to the following conditions:

(a) Contracting Agency shall make reasonable efforts to inform known insurance agents or insurers in the competitive market area of the subject matter of the contract, and to solicit proposals for providing the services required in connection with the contract. Such efforts may include one or more of the following methods: direct mailed notice, publishing notice in a newspaper of general circulation, or posting notice on Contracting Agency's website.

(b) Contracting Agency shall select an agent or insurer on the basis of the most competitive offer considering coverage, premium cost, and service to be provided.

RESOLUTION 2024-03

A RESOLUTION ESTABLISHING PURCHASING AUTHORITY AND SPENDING LIMITS FOR THE CITY OF COBURG STAFF

WHEREAS, the City of Coburg (City) has adopted Ordinance No. A-255, which identifies the City Administrator as the City’s purchasing manager; and

WHEREAS, Ordinance No. A-255 further directs that City Administrator and other staff spending authorities be delegated by resolution; and

WHEREAS, the City’s daily operations require staff to initiate procurements for public contracts, including those for goods, services, and public improvements, as well for as non-public contracts, such as grant agreements and real property leases, in the most efficient manner; and

WHEREAS, it is in the City’s best interest for staff to be able to award certain contracts in an efficient and cost-effective manner, while retaining ultimate fiscal responsibility to the City Council; and

WHEREAS, the City Council, by this resolution, wishes to delegate some Contracting Agency authority to the City Administrator, City department heads and other staff, and establish spending limits therefore.

NOW, THEREFORE, the City of Coburg resolves as follows:

Section 1: Definitions. For the purposes of this resolution and the related policies, rules, and procedures, the following terms shall have the following meanings:

- 1.1 “Emergency” means circumstances that (1) could not have been reasonably foreseen; (2) create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and (3) require prompt execution of a contract to remedy the condition.
- 1.2 “Procurement” means the act of purchasing, leasing, renting or otherwise acquiring interests in real property, goods and services, or construction labor and materials. Procurement includes each function and procedure undertaken or required to be undertaken by the City to enter into, administer, and obtain performance under a City Contract pursuant to the City’s Public Contracting Rules or state law.

Section 2: City Administrator Authority. The City Administrator, or the City Administrator's designee, is authorized to:

- A. Enter into City contracts in amounts not exceeding **[\$50,000/75,000]**. Contracts over this delegated spending limit require additional authorization from the City Council.
- B. Enter into contracts in an Emergency in amounts not exceeding **[\$100,000/\$150,000]**. The City Administrator must inform the Council of all executed Emergency Contracts at the Council's next regularly scheduled meeting.
- C. Recommend that the City Council approve or disapprove contract awards, change orders, and amendments in amounts over **[\$50,000/75,000]**.
- D. Consistent with Ordinance No. A-255 and the City's Public Contracting Rules, create and amend solicitation materials, contracts, and forms, procedures, and administrative policies for all City Procurements.
- E. Enter into contracts or issue permits for local concessions and street vendors pursuant to applicable City policy, where the annual amount to be paid to or by the City is not expected to exceed **[\$50,000/75,000]** per year.

Section 2: Department Head Authority. Department heads are hereby authorized to enter into City contracts in amounts not exceeding **[\$5,000/10,000]**. Contracts over **[\$5,000/10,000]** may be entered into by department heads only with the City Administrator's prior written approval.

Section 3. Other Staff Authority. City staff other than department heads are authorized to enter into City contracts in amounts not exceeding \$1,500, subject to prior delegation from that staff member's department head and City Administrator's written approval of that delegation.

Section 4. Contracts with Employees. Purchases of goods from City employees shall require the prior written authorization of the City Administrator or the City Administrator's designee. Provision of services by City employees shall be in accordance with the City Personnel Policies and other applicable law.

Section 5. Repeal. All previously adopted Council action, including but not limited to resolutions, motions, orders or policies, which establish spending authority for the City

Administrator and City staff are hereby repealed to the extent inconsistent with the Council’s spending authority delegation adopted herein.

Section 6. Effective Date. This Resolution shall take effect upon the effective date of Ordinance A-255.

Adopted by the **City Council** of the **City of Coburg**, Oregon, by a vote of ___ for and ___ against, this ___ day of April, 2024.

Nancy Bell, Mayor

ATTEST: _____
Sammy L. Egbert

DRAFT



**COBURG CITY COUNCIL
ACTION ITEM**

Pavilion Park Phase I Contract Pre-Authorization

Meeting Date	Staff Contact	Email
April 9, 2024	Adam Hanks, City Administrator Brian Harmon, Public Works Director	Adam.Hanks@ci.coburg.or.us Brian.Harmon@ci.coburg.or.us

REQUESTED COUNCIL ACTION

Staff requests Council “not to exceed” pre-approval for Pavilion Park Phase I sub-contractor electrical and plumbing contract services as staff anticipates the potential for one or both contracts to exceed the current City Administrator contract/spending authority limit of \$10,000.

Suggested Motion

I move to authorize the City Administrator to execute plumbing and electrical contracts in support of phase I of the Pavilion Park Improvements project not to exceed \$20,000 each and request that the final contract amounts be reported back to Council at a future Council meeting.

BACKGROUND

As described in prior Park|Tree Committee and Council meetings, the Pavilion Park Improvements project was separated into phases with an intention of both accommodating use of the park in the summer season and to allow components of the project to be done by City staff to reduce the overall project cost.

Staff feels confident that all preparations for utility work and restroom building site preparation can be accomplished in house, but Building Code and technical expertise require that some elements of the plumbing and electrical work be done by commercially licensed sub-contractors.

Staff utilized a hybrid RFP/bids & quotes process to solicit interest in the project and to determine the lowest available bidder who is also willing to work with the City as the general contractor and collaborate with the sub-contractors on earth work (trenching) and other tasks not required to be completed by licensed sub-contractors.

RECOMMENDATION AND ALTERNATIVES

Staff recommends Council pre-approval/pre-authorization of these two upcoming contracts which allows the project to move forward in April and early May with the restroom building planned for delivery and installation the third week in May. Alternatives include delaying the project until the May Council meeting and/or requesting a delay on the delivery of the restroom.

BUDGET / FINANCIAL IMPACT

As noted above, the primary intention of breaking the project into phases is to reduce project costs where possible. Staff feels confident that the work done in phase I will significantly reduce the bid price of phase II, which is scheduled to go out to bid in July/August, selection and contract execution in August/September, construction in September/October and completion in December.

PUBLIC INVOLVEMENT

Numerous prior project discussions and decisions have occurred both with the Park|Tree Committee and City Council. Project information signs will be developed and posted on site to inform the community of the work being done and the expected timeline for completion. This information will also be distributed on the City website and through social media.

NEXT STEPS

Upon authorization, staff will execute contracts and begin initial earthwork at Pavilion Park in preparation for the restroom building delivery and installation in late May.

ATTACHMENTS

1. RFP for Pavilion Park Phase I Electrical and Plumbing Contract Services



CITY OF COBURG: PAVILION PARK PHASE I IMPROVEMENTS

REQUEST FOR BIDS

Pursuant to ORS 279C.412 and City Ordinance No. A-91c, Sections 8.B(2) and 9.A, the City of Coburg (City) is requesting written quotes for electrical and plumbing sub-contracting work for phase I of Pavilion Park upgrades in Coburg Oregon.

Bids will be accepted for either the plumbing or electrical work independently or combined as one bid for both elements (see page 2 for breakdown).

Bids shall be submitted via email to Brian Harmon, Coburg Public Works Director brian.harmon@ci.coburg.or.us by 4:00 PM on Thursday, April 11, 2024. There will be no formal opening of the bids received. Bids will be reviewed and evaluated on a variety of criteria stated below and decision made by City staff. The City reserves the right not to accept quotes after the stated submittal deadline date and time.

All questions related to this Project should be directed to Brian Harmon, Coburg Public Works Director brian.harmon@ci.coburg.or.us

The successful awardee will be chosen based upon the following criteria, which will be given equal weighting: budget, timeline/schedule and experience.

This project is for a public works project and is subject to ORS 279C.800 to 279C.870 relating to the payment of prevailing wages if applicable.

Oregon's prevailing wage rates, as set forth in the January 5, 2024, publication "Prevailing Wage Rates for Public Works in Oregon effective January 5, 2024," located at <https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>, are incorporated by reference into this packet.

The disclosure of first-tier subcontractors is not required under ORS 279C. All Quote Providers, however, are requested to include identification of partner companies, key suppliers, and subcontractors that are included in the Quote and their roles clearly identified so that the City may better evaluate the ability of the submitter to provide what is proposed. The City shall consider the bid of any Quote Provider that does not submit the partner, key supplier or subcontractor disclosure to City to be a nonresponsive bid and may not award the contract to the contractor.

If awarded, the City will award the contract to the prospective contractor whose quote will best serve the interests of the City.

All contractors shall provide with their quote a copy of contractor's public works bond filed with the Oregon Construction Contractors Board, if required by ORS 279C.830.

Project Scope

Electrical

1) Restroom Project

Installation of all necessary electrical components to new pre-fabricated restroom building to be delivered to park site.

- Project includes junction box installation, conduit and wire pull, energizing of building upon delivery/installation.
- Trenching/earthwork to be completed by City
- Permits to be obtained by contractor, paid by City.
- Plan set provided by City
- Utility prep work must be complete prior to building deliver date (est. May 15). Remainder of work to be completed upon building install.

2) Water Fountain

Install conduit, wire and junction boxes to stub power to future water fountain location.

- Fountain is design build project and may require contractor to provide input on adequate power supply for future pump system.
- Trenching/earthwork to be completed by City
- Permits to be obtained by contractor, paid by City.
- Plan set provided by City
- Work must be complete by September 6, 2024.

Plumbing

1) Restroom Project

Installation of all necessary sanitary sewer and domestic water connections to new pre-fabricated restroom building to be delivered to park site.

- Project includes connection of restroom building to septic tank (installed by City), extension of water line to restroom pad, connection of both sewer and water to restroom building upon delivery and installation
- Trenching/earthwork to be completed by City
- Permits to be obtained by contractor, paid by City.
- Plan set provided by City
- Utility prep work must be complete prior to building deliver date (est. May 15). Remainder of work to be completed upon building install.

2) Water Fountain

Installation of waterline extension to, and drain line extension from fountain site

- Fountain is design build project and may require contractor to provide input on final plumbing related design considerations
- Trenching/earthwork to be completed by City
- Permits to be obtained by contractor, paid by City.
- Plan set provided by City
- Work must be complete by September 6, 2024.

Insurance – Awardee shall provide the following insurance:

- A Certificate of Liability Insurance coverage with a carrier rated A or better by Best Insurance guide, listing the dollar amount of the coverage with the Proposal, not less than \$2,000,000 total aggregate coverage.
- Certificate holder must be:
 - City of Coburg, Councilors, Officers, Agents and Employees
 - PO Box 8316
 - Coburg, OR 97408
- Full casualty insurance on the structure, naming City as an additional insured, from time of first possession, until certificate of occupancy is accepted by the City.
- Certificate of Workers' Compensation Insurance.

Protest and Procedures – Protests and remedies under this Request for Quote are exclusively governed by ORS 279C.460 *et seq.*

Rights Reserved – City reserves the right to:

- A. Reject any Quote not in compliance with all prescribed public contracting procedures and requirements and other applicable laws.
- B. Reject for good cause any and all Contractors upon the City finding that it is in the public interest to do so.
- C. Reject any Contractor or Quote not meeting or differing from the specifications set forth herein.
- D. Waive any and all minor irregularities or informality in the Contractor submitted when, in the opinion of City, it is in its best interest to do so.
- E. Consider the competency and responsibility of Contractors in making any awards.
- F. Reject a selected Contractor if within a reasonable time determined solely at the discretion of the City, Contractor has not executed the project contract.
- G. Hold up to three Quotes determined best by the City under consideration until the final award is made, provided that the City shall award the contract within 90 days after the Quote opening date.
- H. Extend the deadline for submitting Quotes.
- I. Seek other quotes or potential solutions, if deemed in the public interest or if no satisfactory proposals are received.

DOOR SCHEDULE			
TYPE	FRAME	DOOR SIZE	MATERIAL
A	SLATE GLASSING N/A	3'-0" x 6'-8" x 3-1/4" RICK PLATE N/A	GALVANIZED STOP FLOOR
B	SLATE GLASSING N/A	3'-0" x 6'-8" x 3-1/4" RICK PLATE N/A	GALVANIZED STOP FLOOR
C	SLATE GLASSING N/A	2'-8" x 7'-0" x 3-1/4" RICK PLATE N/A	GALVANIZED STOP WALL

WINDOW & VENT SCHEDULE			
TYPE	FRAME	DOOR SIZE	MATERIAL
A	SLATE GLASSING N/A	2'-8" x 7'-0" x 3-1/4" RICK PLATE N/A	GALVANIZED STOP WALL
B	SLATE GLASSING N/A	2'-8" x 7'-0" x 3-1/4" RICK PLATE N/A	GALVANIZED STOP WALL

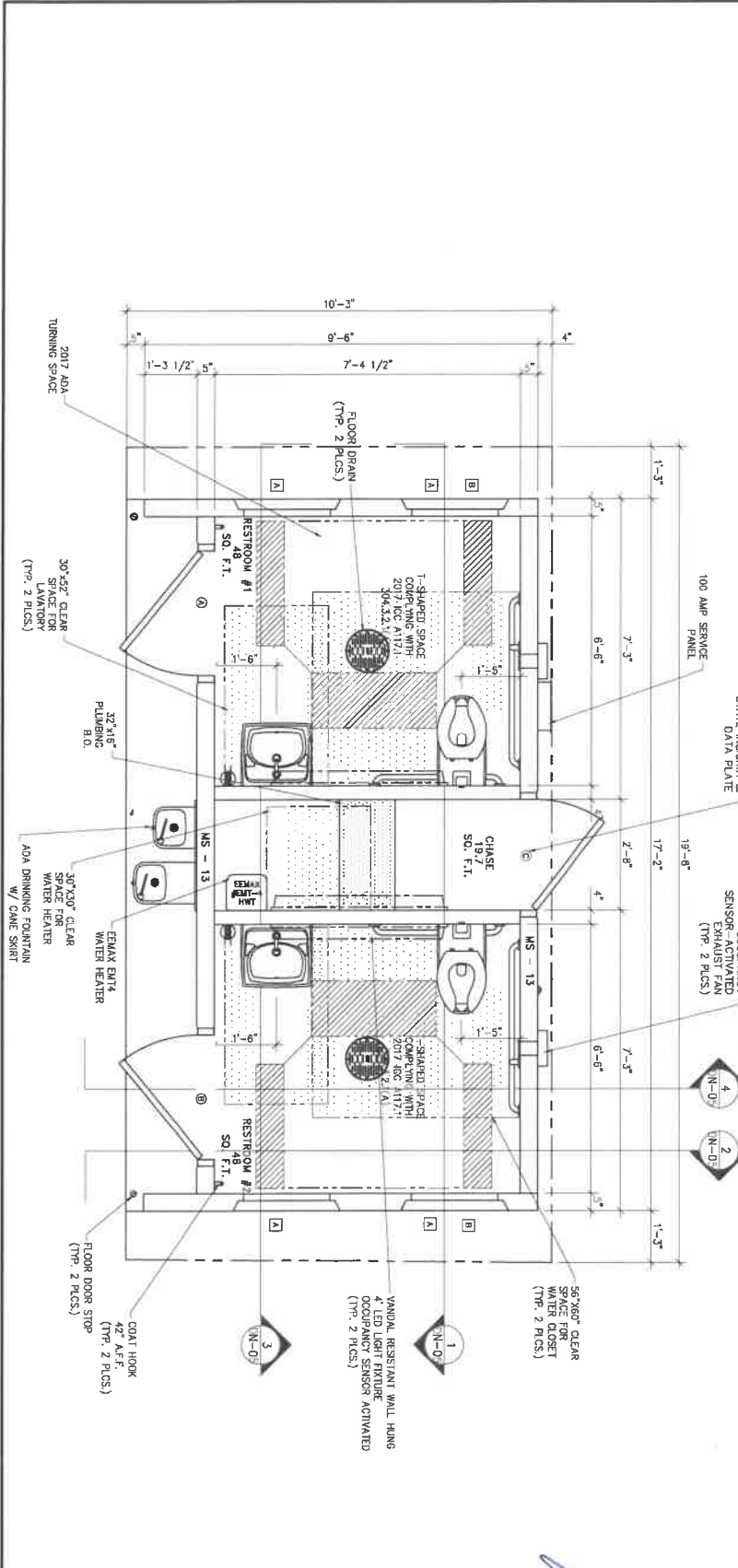
SYMBOL DESCRIPTION			
A	MS-4 LEXAN WINDOW, EM-2 & EM-3		
B	MS-2 VENT, EM-1 & EM-2		

DOOR TYPE	LATCH	LOCK
UR REVERSE SWEEP	MORTISE THUMB TURN THRESHOLD 3" x 4" x 1/2"	DEADBOLT THUMB TURN VENTILATION LOUVER
UR REVERSE SWEEP	MORTISE THUMB TURN THRESHOLD 3" x 4" x 1/2"	DEADBOLT THUMB TURN VENTILATION LOUVER
UR REVERSE SWEEP	MORTISE THUMB TURN THRESHOLD 3" x 4" x 1/2"	DEADBOLT THUMB TURN VENTILATION LOUVER

- ALL EXTERIOR DOORS AND WINDOWS TO BE LISTED AND LABELED AS COMPLIANT WITH AAMA/WDMA/CSA101/1.5.2/440 OR TESTED PER AASTM E330.
- DOOR HARDWARE SHALL NOT REQUIRE TIGHT DRASPRING, TIGHT FINCHING OR TWISTING OF OPERATOR OR SPECIAL KNOWLEDGE TO UNLATCHING OF ANY DOOR SHALL NOT REQUIRE MORE THAN ONE OPERATION.

LIGHTING AND VENTILATION REQUIREMENTS			
AREA	REQUIRED VENTILATION	PROVIDED VENTILATION	REQUIRED NATURAL LIGHTING
RESTROOM	48.00 SQ. FT.	1.97 SQ. FT.	0.79 SQ. FT.
CHASE	19.67 SQ. FT.	0.79 SQ. FT.	1.72 SQ. FT.
CHASE	1.97 SQ. FT.	0.79 SQ. FT.	1.57 SQ. FT.
CHASE	2.84 SQ. FT.***	0.00 SQ. FT.	0.00 SQ. FT.***

***ARTIFICIAL LIGHTING PROVIDED TO MEET REQUIRED FOOT CANDLES.



REGISTERED PROFESSIONAL ENGINEER
71152PE
WILLIAM MICHAEL KEIDER
EXPIRATION DATE: 06/30/2025
January 7, 2024

LB Foster
CXT® Products
3971 E. Potomac Ave. Bldg. 300 West, D 83889
282 Newry Road, Westminster, WV 26157

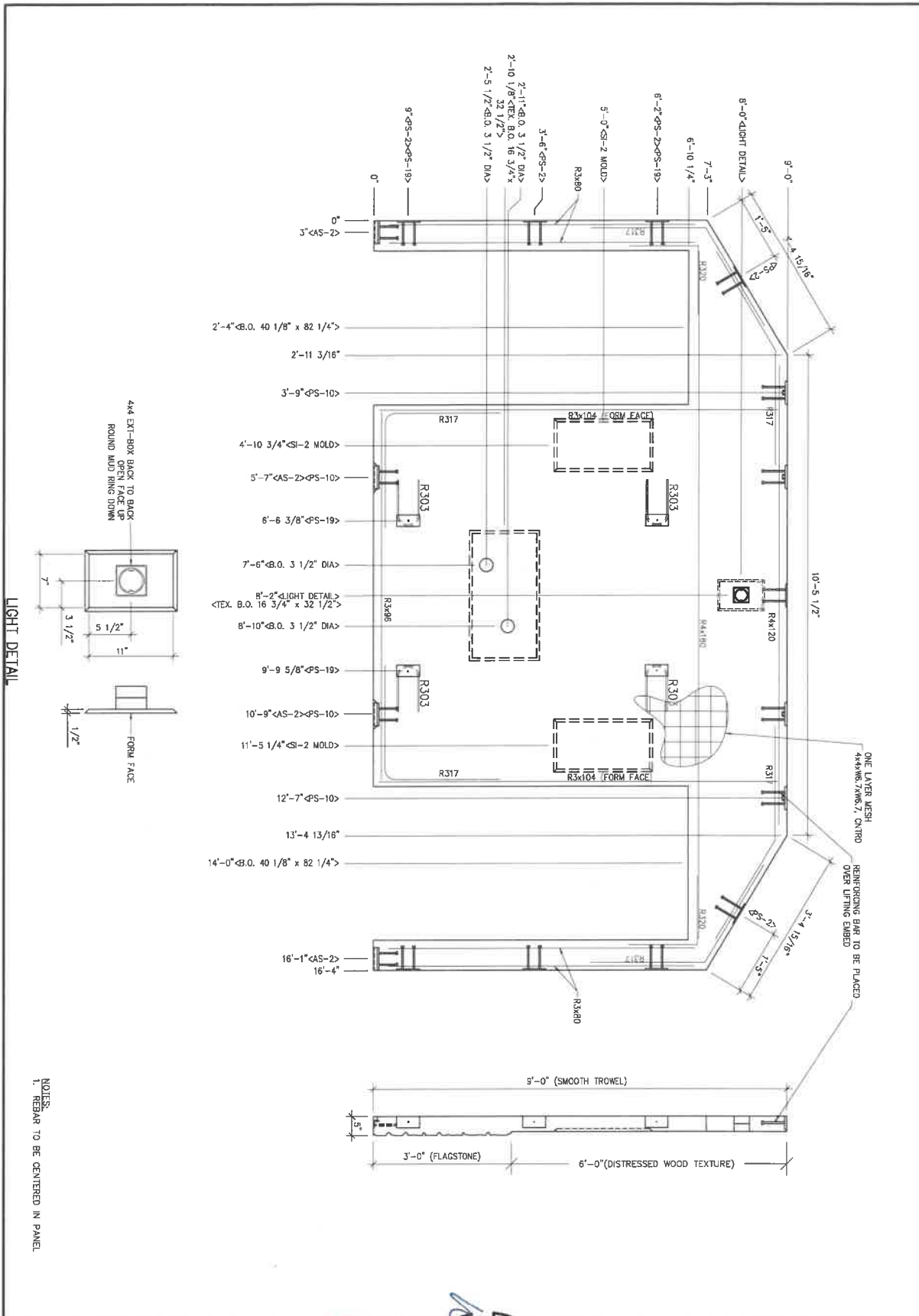
NOTICE:
The information contained herein is the property of LB Foster and the user of this information is to be used for the project and site only. It is not to be used for any other project or site without the written consent of LB Foster. The user of this information is to be held responsible for any errors or omissions in this information. The user of this information is to be held responsible for any damages or losses resulting from the use of this information. LB Foster is not responsible for any damages or losses resulting from the use of this information.

REVISIONS:

NO.	DATE	DESCRIPTION
1	11/20/23	ISSUED FOR PERMIT
2	11/20/23	ISSUED FOR PERMIT
3	11/20/23	ISSUED FOR PERMIT

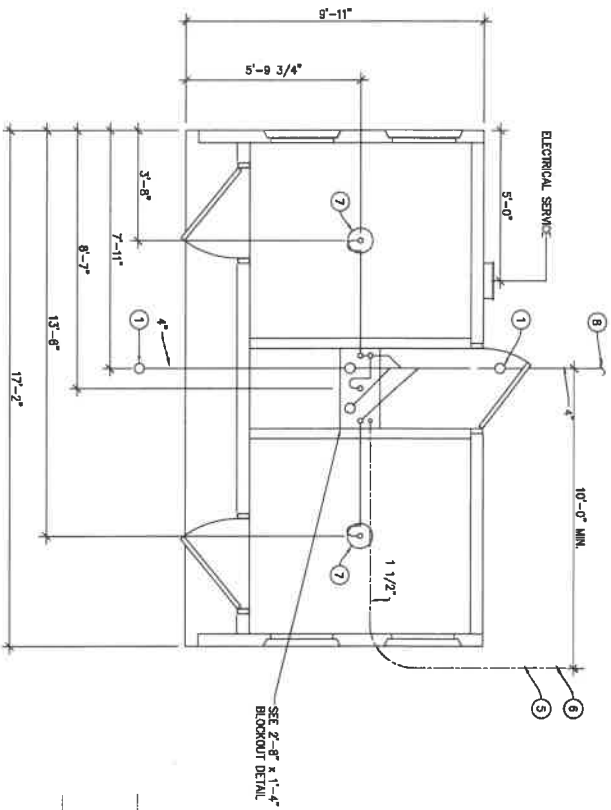
PROJECT: FLOOR PLAN
DATE: 11/20/23
BY: LB FOSTER
CHECKED: LB FOSTER
SCALE: AS SHOWN

NO.: DN-03
SHEET: 3
TOTAL SHEETS: 24
REV.: 0



NOTES:
1. REBAR TO BE CENTERED IN PANEL.

ITEM NO.	DESCRIPTION	QTY	UNIT
1	4x4 EXT-BOX BACK TO BACK ROUND MOLD FINIS DOWN	1	EA
2	FORM FACE	1	EA
3	4x4 EXT-BOX BACK TO BACK ROUND MOLD FINIS DOWN	1	EA
4	FORM FACE	1	EA
5	4x4 EXT-BOX BACK TO BACK ROUND MOLD FINIS DOWN	1	EA
6	FORM FACE	1	EA
7	4x4 EXT-BOX BACK TO BACK ROUND MOLD FINIS DOWN	1	EA
8	FORM FACE	1	EA
9	4x4 EXT-BOX BACK TO BACK ROUND MOLD FINIS DOWN	1	EA
10	FORM FACE	1	EA
11	4x4 EXT-BOX BACK TO BACK ROUND MOLD FINIS DOWN	1	EA
12	FORM FACE	1	EA
13	4x4 EXT-BOX BACK TO BACK ROUND MOLD FINIS DOWN	1	EA
14	FORM FACE	1	EA
15	4x4 EXT-BOX BACK TO BACK ROUND MOLD FINIS DOWN	1	EA
16	FORM FACE	1	EA
17	4x4 EXT-BOX BACK TO BACK ROUND MOLD FINIS DOWN	1	EA
18	FORM FACE	1	EA
19	4x4 EXT-BOX BACK TO BACK ROUND MOLD FINIS DOWN	1	EA
20	FORM FACE	1	EA
21	4x4 EXT-BOX BACK TO BACK ROUND MOLD FINIS DOWN	1	EA
22	FORM FACE	1	EA
23	4x4 EXT-BOX BACK TO BACK ROUND MOLD FINIS DOWN	1	EA
24	FORM FACE	1	EA



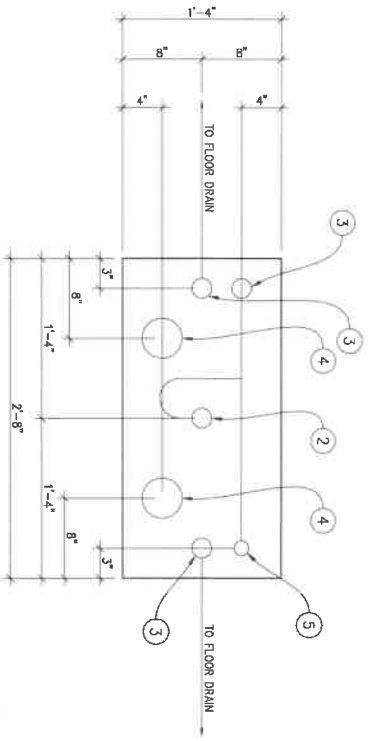
FLOOR DRAIN BLOCKOUTS & BELOW FLOOR PIPING

- BELOW FLOOR PIPING — KEY NOTES**
1. 4" CLEAN OUT TO GRADE
 2. 2" FLOOR DRAIN WITH FIELD INSTALLED TRAP PRIMER (2'-8" x 1'-4" BLOCKOUT)
 3. 2" VENT PIPES EXTENDED 12" ABOVE FINISHED FLOOR LEVEL. PROVIDE TEST PLUG. (2'-8" x 1'-4" BLOCKOUT)
 4. 4" WASTE PIPE EXTENDED 12" ABOVE FINISHED FLOOR LEVEL. PROVIDE TEST PLUG. (2'-8" x 1'-4" BLOCKOUT)
 5. 1 1/2" TYPE 'K' OR 'L' ANNEALED "SOFT" COPPER WATER SERVICE EXTENDED 12" ABOVE FINISHED FLOOR LEVEL. PROVIDE CAP AT END. (2'-8" x 1'-4" BLOCKOUT)
 6. MIN. BURY PER LOCAL REQUIREMENTS TO PROTECT AGAINST FREEZING AND DAMAGE.
 7. 2" FLOOR DRAIN WITH FIELD INSTALLED TRAP SEAL. (10" DIA BLOCKOUT)
 8. 30" MIN. BURY. PROVIDE TRACER TAPE.
 9. MAXIMUM ALLOWABLE WATER PRESSURE IS TO BE 70PSI.
 10. MINIMUM ALLOWABLE WATER PRESSURE IS TO BE 40PSI.

PIPING LEGEND

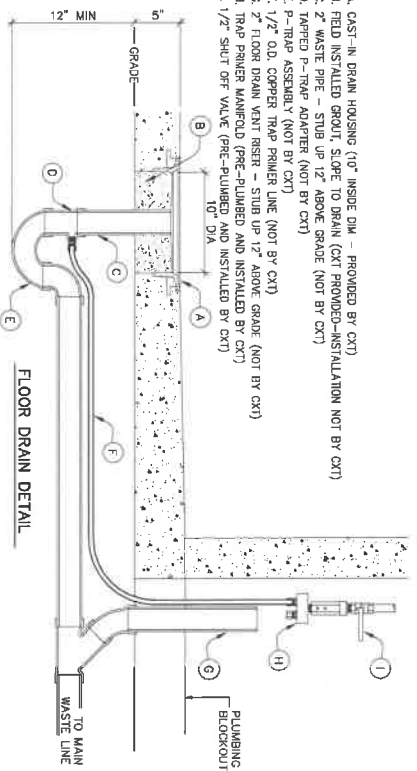
- 1 1/2" WATER SERVICE, ANNEALED "SOFT" COPPER, ASTM B88, TYPE 'K' OR 'L'
- BELOW FLOOR WASTE PIPING, SDR 40 PVC, DWV, D2885, TYPE
- BELOW FLOOR VENT PIPING, SDR 40 PVC, ASTM D2885, TYPE DWV

ALL PIPING INDICATED ON THIS SHEET IS NOT BY CXT

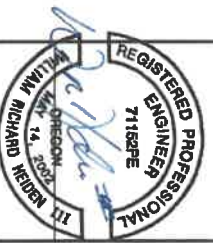


2'-8" x 1'-4" BLOCKOUT DETAIL

- A. CAST-IN DRAIN HOUSING (10" INSIDE DIA. - PROVIDED BY CXT)
- B. FIELD INSTALLED GROUT, SLOPE TO DRAIN (CXT PROVIDED—INSTALLATION NOT BY CXT)
- C. 2" WASTE PIPE - STUB UP 12" ABOVE GRADE (NOT BY CXT)
- D. TAPPED P-TRAP ADAPTER (NOT BY CXT)
- E. P-TRAP ASSEMBLY (NOT BY CXT)
- F. 1/2" O.D. COPPER TRAP PRIMER LINE (NOT BY CXT)
- G. 2" FLOOR DRAIN VENT RISER - STUB UP 12" ABOVE GRADE (NOT BY CXT)
- H. TRAP PRIMER MANIFOLD (PRE-PLUMBED AND INSTALLED BY CXT)
- I. 1/2" SHUT OFF VALVE (PRE-PLUMBED AND INSTALLED BY CXT)



FLOOR DRAIN DETAIL



LB Foster
CXT® Products

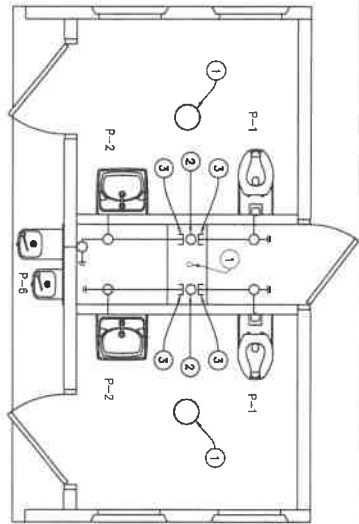
3771 E. Frontage Ave. Bldg. 300, King, OR 97137
3822 Newry Road, Wilsonville, OR 97157

OPERATION DATE: 06/20/2023
January 7, 2024

PROJECT: UNDERGROUND PIPING LAYOUT
BUILDING NUMBER: NW-438

NO.	DATE	BY	CHKD.	REV.
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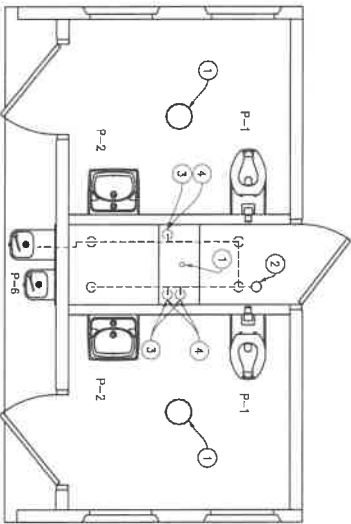
PROJECT NO. DN-18
SHEET NO. 18
REV. 0



WASTE PIPING

WASTE PIPING – KEY NOTES

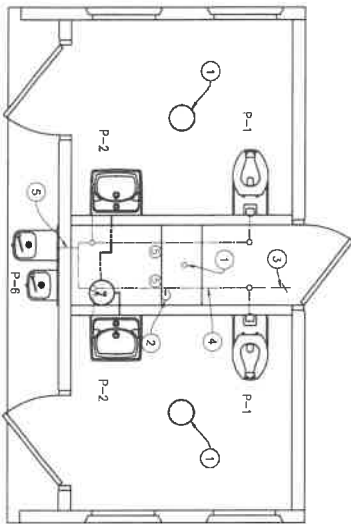
1. 2" FLOOR DRAIN P-7, FIELD INSTALLED (NOT BY CXT)
2. 4" WASTE THROUGH FLOOR, FIELD INSTALLED (NOT BY CXT)
3. PRODUCE TEST PLUG IN END OF WASTE PIPE. CONTINUATION OF PIPING IS FIELD INSTALLED & NOT BY CXT.



VENT PIPING

VENT PIPING – KEY NOTES

1. 2" FLOOR DRAIN P-7, FIELD INSTALLED (NOT BY CXT)
2. 3" VENT THROUGH ROOF.
3. 2" VENT WITH TEST PLUG.
4. FIELD INSTALLED 2" VENT PIPING FROM FLOOR DRAINS. (NOT BY CXT)



WATER PIPING

WATER PIPING – KEY NOTES

1. 2" FLOOR DRAIN, FIELD INSTALLED (P-7) (NOT BY CXT)
2. FIELD INSTALLED 1 1/2" WATER SUPPLY WITH SHUT-OFF VALVE NEAR FLOOR. (NOT BY CXT)
3. 3/4" HOSE BIB WITH VACUUM BREAKER AND WHEEL HANDLE.
4. WATER PIPING ALONG WALL.
5. ELKAY UNIVERSAL FILTRATION KIT 3,000 GALLON – EW3000

PIPING LEGEND

- COLD WATER, COPPER, ASTM B88, TYPE 'K' OR 'L'
- HOT WATER, COPPER, ASTM B88, TYPE 'K' OR 'L'
- ASTM B88, TYPE 'K' OR 'L'
- VENT PIPING, SCH 40 PVC, ASTM D2685, TYPE DWV
- WASTE PIPE, SCH 40 PVC, ASTM D2685, TYPE DWV
- FIELD PIPING, (NOT BY CXT)



EXPIRATION DATE: 06/30/2023
January 7, 2024

LB Foster
CXTe Products

3700 S. Riverside Ave. Bldg. 500
Portland, OR 97214
302 Kowalsky Road, Milwaukie, OR 97137

DETAILED
BUILDING NUMBER DN-435

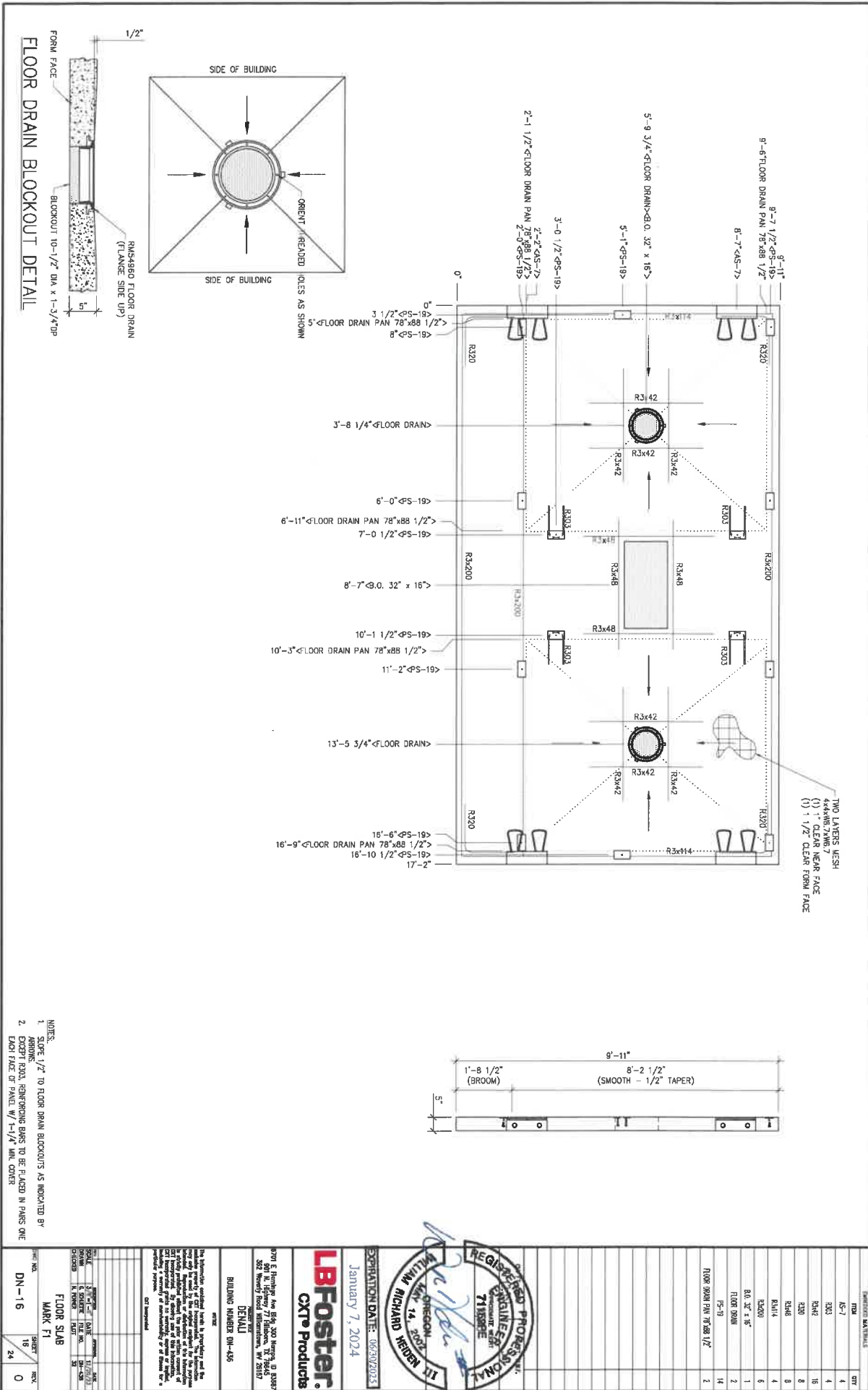
The above-mentioned work is preliminary and the contractor shall verify the actual conditions for the work to be performed. The contractor shall be responsible for providing the necessary permits and approvals for the work to be performed. The contractor shall be responsible for obtaining the necessary permits and approvals for the work to be performed.

NO.	DATE	BY	REVISION
1	01/07/24	WJH	ISSUED FOR PERMIT
2	01/07/24	WJH	ISSUED FOR PERMIT
3	01/07/24	WJH	ISSUED FOR PERMIT
4	01/07/24	WJH	ISSUED FOR PERMIT
5	01/07/24	WJH	ISSUED FOR PERMIT

PLUMBING
PLANS & NOTES

DN-19

19/24



- NOTES:
1. SLOPE 1/2" TO FLOOR DRAIN BLOCKOUTS AS INDICATED BY
 2. DRAINING PAN'S. EMERGENCY PAN'S TO BE PLACED IN PANS ONE EACH FACE OF PANEL W/ 1-1/4" MIN. COVER

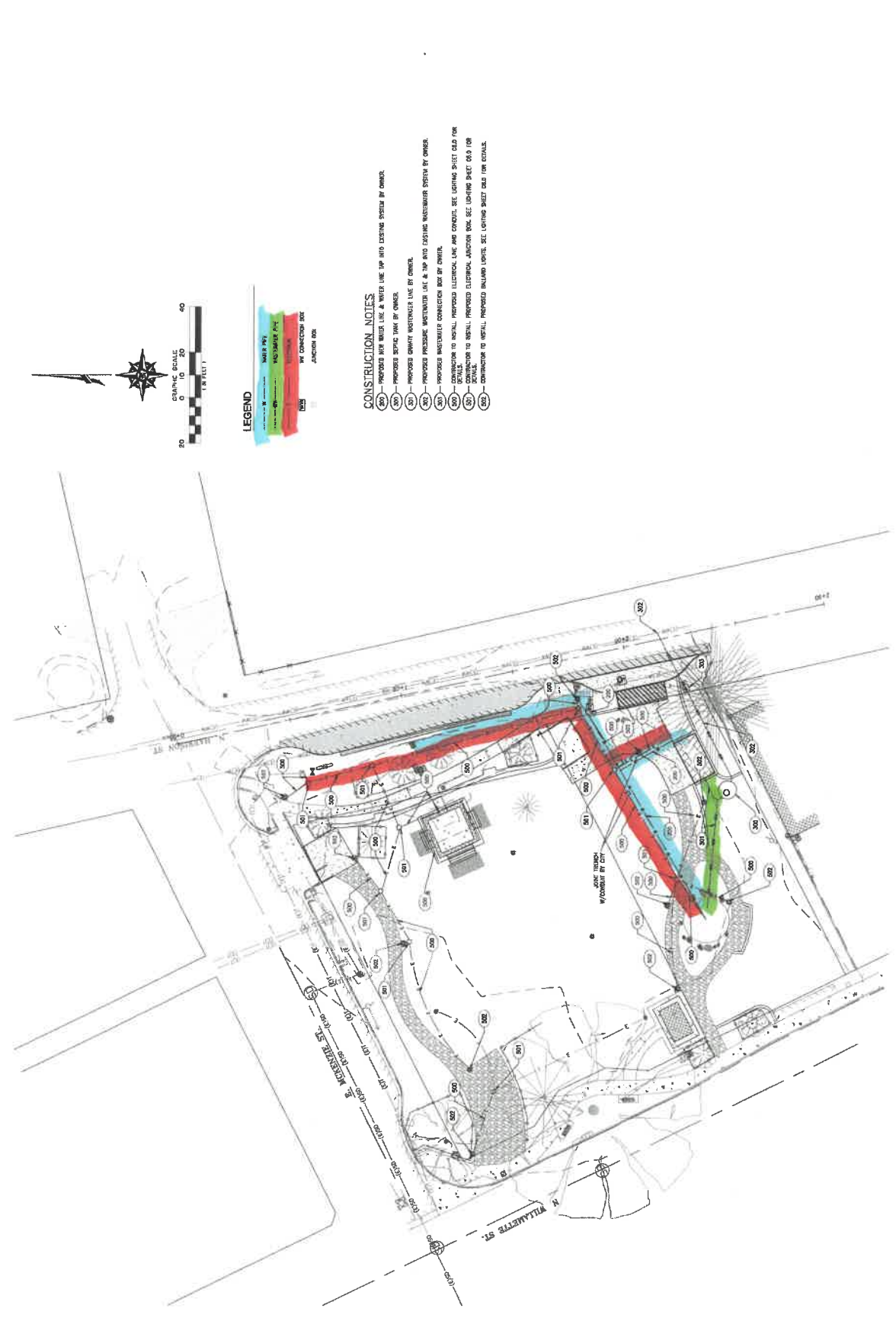
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6	444x66x7mm 7	6	EA
7	444x66x7mm 7	1	EA
8	444x66x7mm 7	2	EA
9	444x66x7mm 7	14	EA
10	444x66x7mm 7	2	EA



LB Foster
CXT® Products

3701 E. Holladay Ave. Ste. 200, Klamath Falls, OR 97603
502 Newberry Road, Millersburg, WI 53187
3602
BUILDING NUMBER: DN-456

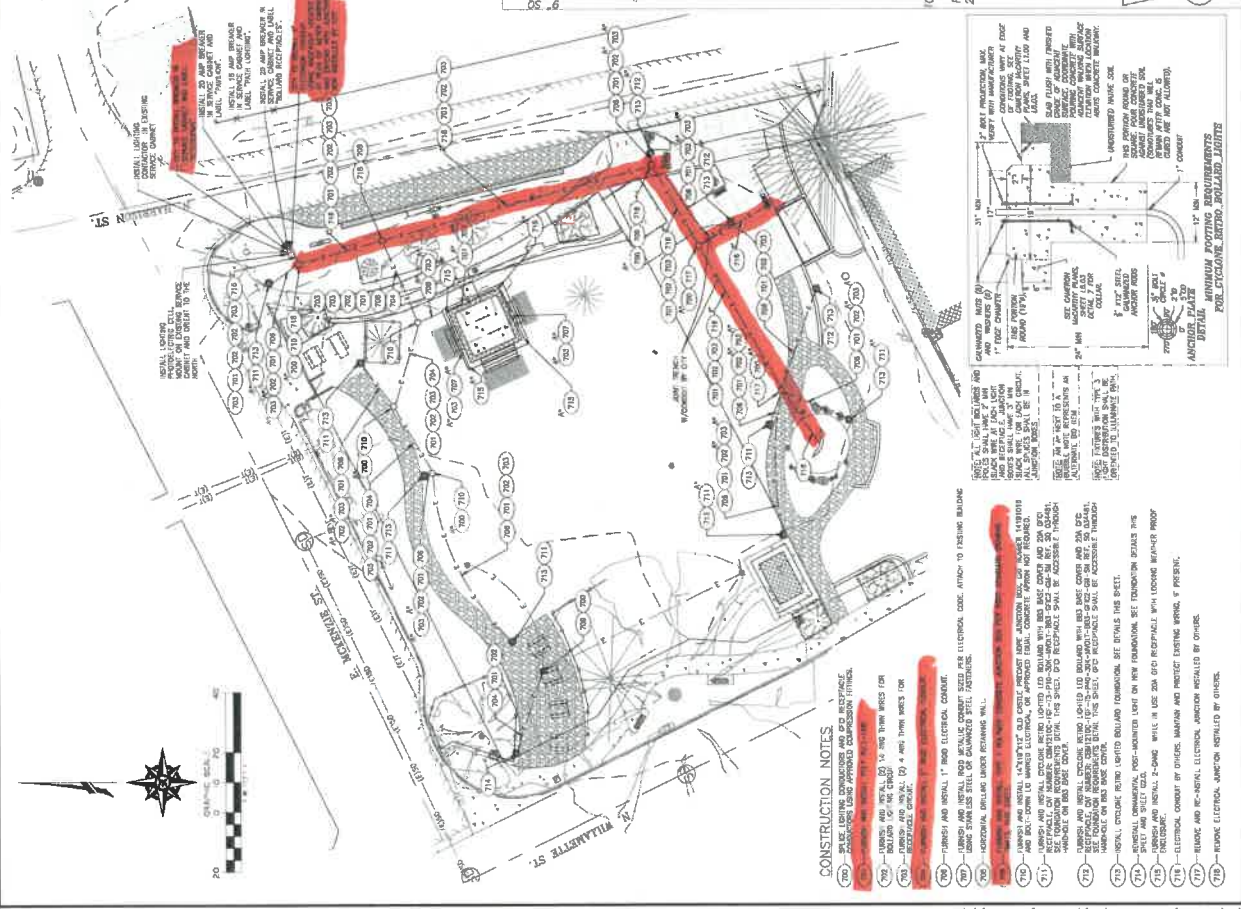
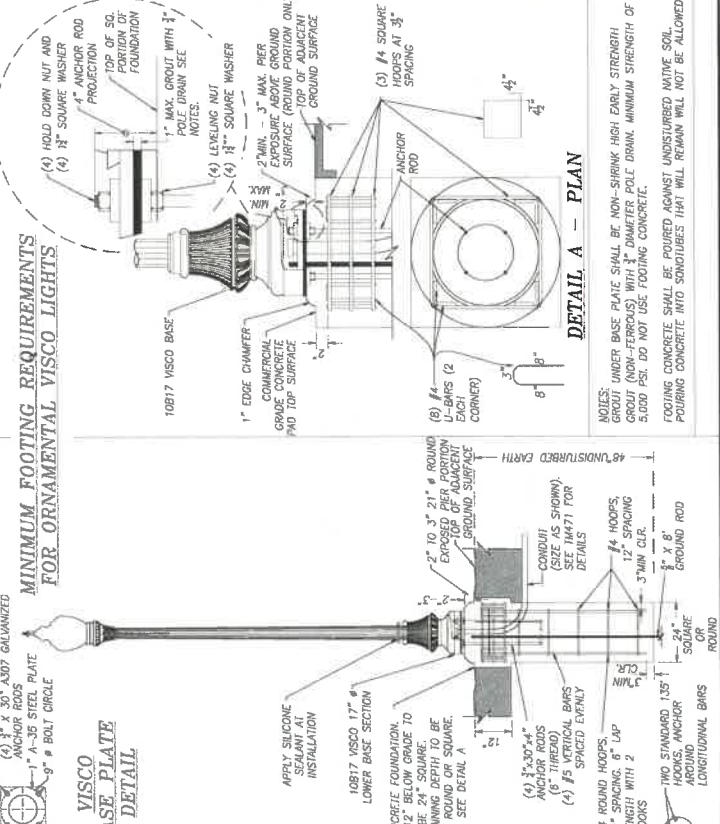
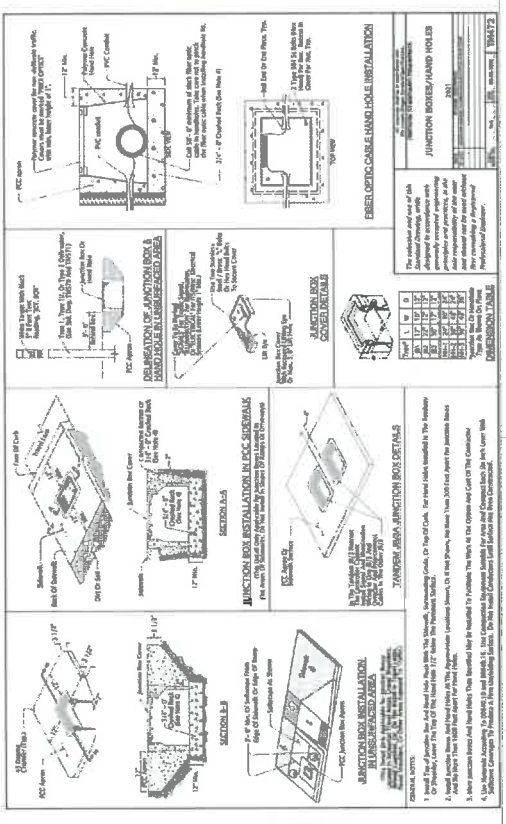
DETAIL
MARK F1
DN-16



LEGEND

Water Line	Proposed Water Line
Sewer Line	Proposed Sewer Line
Gas Line	Proposed Gas Line
Electric Line	Proposed Electric Line
Meter	Proposed Meter
Junction Box	Proposed Junction Box

- CONSTRUCTION NOTES**
- 1. PROPOSED WATER LINE & WATER LINE TAP INTO EXISTING SYSTEM BY OWNER.
 - 2. PROPOSED SEWER TAKE BY OWNER.
 - 3. PROPOSED GROUND MOUNTING LINE BY OWNER.
 - 4. PROPOSED METER AND METER BOX BY OWNER.
 - 5. PROPOSED METER AND METER BOX BY OWNER.
 - 6. PROPOSED METER AND METER BOX BY OWNER.
 - 7. CONDUCTOR TO METER, PROPOSED ELECTRICAL LINE AND CONDUIT. SEE LIGHTING SHEET C4.9 FOR CONDUCTOR TO METER, PROPOSED ELECTRICAL JUNCTION BOX. SEE LIGHTING SHEET C4.9 FOR CONDUCTOR TO METER, PROPOSED MOUNTING BRACKET. SEE LIGHTING SHEET C4.9 FOR CONDUIT.



RESOLUTION 2024-04

A RESOLUTION ADOPTING A CAPITAL IMPROVEMENT POLICY AND FY2024-25 PROJECT LIST.

WHEREAS,

WHEREAS, the City has a capital project list that is utilized to schedule and budget projects; and

WHEREAS, the City wishes to establish a uniform policy for how the project list will be updated and maintained; and

WHEREAS, the City has Master Planned documents that inform the project lists; and

WHEREAS, the City wishes to ensure that Capital projects are planned, funded and constructed in a timely manner; and

WHEREAS, the City wishes for the Capital Project List to be reviewed and updated annually through resolution prior to the Budget Process;

NOW, THEREFORE, THE CITY OF COBURG RESOLVES AS FOLLOWS: by the City Council of the City of Coburg, the adoption of the Capital Improvement Policy and Capital Project List.

Adopted by the **City Council** of the **City of Coburg**, Oregon, by a vote of **5** for and **0** against, this 9th day of April, 2024.

Nancy Bell, Mayor

ATTEST:

Sammy L. Egbert, City Recorder



CITY OF COBURG
CAPITAL IMPROVEMENT PROJECT PLAN

Spring 2024
Update

INTRODUCTION

The City of Coburg's Capital Improvement Plan (CIP) is a multi-year citywide infrastructure financial planning document that lists and describes scheduled improvements to the City of Coburg's general government and utility infrastructure across all City departments. More detailed and technical analysis, project objectives and scheduling can be found in specific master plan documents for the City's water and wastewater utilities.

The CIP provides the Council, staff and community with a clear understanding of the timing, costs and funding sources and guides financial planning decision making to ensure adequate funds are available or obtained to ensure the successful completion of the project. Because of the significant costs of many infrastructure projects, the use of debt service impacts not only the individual project but the ability for future projects to be funded, further highlighting the importance and need for a comprehensive and regularly updated CIP document.

Annual review and updating of the CIP occur prior to the budget development process then integrated into the current proposed budget as well as the future years budget forecasts. Capital project budgets are shown in their associated funds where the revenues utilized to fund the project are located. Projects are typically funded in one or more ways, including "cash-funding" with prior year savings and/or annual revenues, grants, debt service (loans) and systems development charges (SDC's)

In order to ensure that priority projects are planned, funded and constructed in a timely manner, this document provides for projected years of engineering and construction completion. When possible, specific revenue sources are attached to the projects so that planning and facilitation can take place for grant and loan applications well in advance of beginning the project. Therefore, there may be engineering costs associated with projects prior to the actual construction schedule.

CAPITAL IMPROVEMENT PROGRAM GOALS

Goals of this CIP Program include:

1. Responsible and efficient financial planning
2. Clear and inclusive planning, engineering and construction timelines
3. Establishment of funding mechanisms for Capital projects and planning for funding applications
4. Local economic development support

- 5. Planning and providing for community growth
- 6. Enhanced safety, access and increased mobility of transportation modes
- 7. Consideration and compliance with environmental standards and improving environmental quality
- 8. High quality and cost-effective maintenance and improvements to existing infrastructure
- 9. Protect Public Health and Safety through regulatory compliance and industry best practices

CAPITAL IMPROVEMENT PROGRAM DEVELOPMENT PROCESS

- December/January: Staff Review and Update to Prior Year CIP
- January/February: CIP Draft Document Provided to Council (retreat or work session)
- March: Adopted by City Council – Public Comment is available
- May/June: CIP incorporated into the Budget Document and Presented

Spending authority (appropriations) occurs only through the budget review/approval process. The prior approval and adoption of the CIP does not convey spending authority. Although the CIP is a starting point for the annual Capital Budget, the projects budgeted each year can vary somewhat in timing and costs from those proposed in the CIP, due to engineering, permitting, contract bidding, seasonal scheduling, grant requirements, etc.

PROJECT CATEGORIZATION

Projects in the CIP are grouped by infrastructure system including:

○ Administration	○ Water
○ Parks/Trails/Open Space	○ Wastewater
○ Street	○ <i>Equipment/Fleet (future category)</i>

Project funding is listed as a category column in the project lists. Funding streams include:

○ User Fees	○ Grants
○ Tax Revenues (property, gas tax)	○ Loans (Debt Service)
○ Special Assessments	○ Systems Development Charges

In some instances, funding may be listed as TBD or “to be determined”. Any project scheduled within the two-year budget should have a funding source listed.

GUIDING DOCUMENTS

This document is supported by multiple guiding documents of the City as follows:

1. Coburg Comprehensive Plan – Dated 5/8/2018

Comprehensive planning is a process that determines community goals and aspirations in terms of community development. The result is called a comprehensive plan, and expresses and regulates public policies on transportation, utilities, land use, recreation, and housing. Comprehensive plans typically encompass large geographical areas, a broad range of topics, and cover a long-term time horizon.

Comprehensive Plan Amendments take place when the City anticipates a change in zoning, or any form of change in development regulations either mandated by the State or determined by the City as necessary for the future progress of the City.

2. Coburg Community Vision – Dated 7/3/2017

The Community vision statement describes the current and future objectives of the City. The vision statement is a guide to help the City make decisions that align with its philosophy and declared set of goals.

3. City of Coburg Development code – 11, 2019

The Coburg Development Code contains detailed descriptions of zoning districts and specifies what uses are allowed, prohibited, and conditional in each zone. The Development Code is intended to cover almost all types of land use issues which may arise, but in cases where a land use is not listed, a process for interpretation of the code is provided.

4. Master Plans

Master plans represent the long range (10 years or more) plan for the City's development of infrastructure. The master plan, and the facilities shown on it, may be built over a period of many years. Therefore, what is shown in a plan may not yet exist in the City. A lot of time and resource is needed to update a master plan. Therefore, adopted capital project lists can serve as the approved projects for the City. Projects can be updated when the master plans are updated. At the City of Coburg, the following Master Plans exist:

- Park and Open Space Master Plan
- Transportation System Plan
- Water Master Plan
- Wastewater Management Plan

Copies of any of the documents listed below are available on the City of Coburg website and can also be obtained by request of the City Administration office.

CITY OF COBURG

Capital Improvements Plan

2025 to 2030 Planning Period



Administration/General Government						TOTAL
PROJECT TITLE/LOCATION	DESCRIPTION	FUNDING SOURCE	EST COST	FISCAL YEAR	PER FY	
1 - City Hall Improvements - HVAC	System Replacement (including ducting)	General Fund Taxes/Fees*	\$ 125,000	2025-26		
2 - City Hall Improvements - Flooring	Full carpet replacement (upstairs/downstairs)	General Fund Taxes/Fees*	\$ 25,000	2025-26		\$ 150,000
3 - City Hall Improvements - Façade	Willamette frontage and parking/landscaping	General Fund Taxes/Fees*	\$ 50,000	2026-27		
4 - Network/Facilities Security Systems Integration		General Fund Taxes/Fees*	\$ 75,000	2026-27		\$ 125,000
TOTAL			275,000			

* Portion of project costs will be allocated to enterprise funds based on approved Cost Allocation Methodology

Parks						TOTAL
PROJECT TITLE/LOCATION	DESCRIPTION	FUNDING SOURCE	EST COST	FISCAL YEAR	PER FY	
1 - Pavilion Park Expansion & Improvements	New Restrooms, fountain, irrigation, lighting	Oregon Parks Grant + General Fund	\$ 400,000	2024-25		
2 - Coburg Loop Path #4	Industrial Wy - Sarah path to Trails End Park	Gas Tax, TUF, SDC, MPO	\$ 600,000	2024-25		\$ 1,000,000
3 - Cobug Creek Park	New Park Facility	Undetermined Grant + Park SDC	\$ 250,000	2026-27		\$ 250,000
4 - Trails End Park - Phase II	Viewing platforms, paths, benches, signage	Undetermined Grant + Park SDC	\$ 250,000	2029-30		\$ 250,000
5 - Julia Morneau Heritage Park	New park (no land purchase)	Undetermined Grant + Park SDC	\$ 250,000	2030 +		
6 - Southside Neighborhood Park	New Park (land + improvements)	Undetermined Grant + Park SDC	\$ 350,000	2030 +		
7 - Northside Neighborhood Park	New Park (land + improvements)	Undetermined Grant + Park SDC	\$ 350,000	2030 +		
8 - Westside Mini-Park	New Park (land + improvements)	Undetermined Grant + Park SDC	\$ 150,000	2030 +		
9 - Southwest Mini-Park	New Park (land + improvements)	Undetermined Grant + Park SDC	\$ 150,000	2030 +		
10 - Coburg Loop 5	Path extension south to Eugene	Undetermined Grant + Park/Trans SDC	\$ 1,500,000	2030 +		\$ 2,750,000
TOTAL			4,250,000			

Transportation						TOTAL
PROJECT TITLE/LOCATION	DESCRIPTION	FUNDING SOURCE	EST COST	FISCAL YEAR	PER FY	
1 - Street Preservation	Crack Sealing	Gas Tax, TUF	\$ 48,000	2024-25		
2 - Street Preservation	Seal Coating	Gas Tax, TUF	\$ 25,000	2024-25		
3 - Industrial Way	Two Inch Overlay/Dig out	Gas Tax, TUF, SDC, MPO	\$ 300,000	2024-25		
4 - N Willamette/Macy/Harrison	Street Reconstruction	Gas Tax, TUF, SCA, SDC	\$ 700,000	2024-25		
5 - Collector Street Project - Phase I (N Coleman)	Street Reconstruction	Gas Tax, TUF, SDC, MPO	\$ 500,000	2024-25		
6 - PW Operations Building	Multi-Dept Operations/Storage Building	Gas Tax, TUF	\$ 100,000	2024-25		
7 - PW Operations Center	Citywide Fuel Storgae/Pump System	Gas Tax, TUF	\$ 50,000	2024-25		\$ 1,723,000
8 - Street Preservation	Crack Sealing	Gas Tax, TUF	\$ 27,000	2025-26		
9 - Street Preservation	Seal Coating	Gas Tax, TUF	\$ 21,000	2025-26		
10 - Harrison St - Mill to Locust	Two Inch Overlay/Dig out	Gas Tax, TUF	\$ 250,000	2025-26		
11 - Locust St - Diamond to Skinner	Two Inch Overlay/Dig out	Gas Tax, TUF	\$ 125,000	2025-26		
12 - Mill St- Emerald to Coleman	Two Inch Overlay/Dig out	Gas Tax, TUF	\$ 150,000	2025-26		\$ 573,000

13 - Street Preservation	Crack Sealing	Gas Tax, TUF	\$ 14,000	2026-27	
14 - Street Preservation	Seal Coating	Gas Tax, TUF	\$ 98,000	2026-27	
15 - Locust St - Willamette to Harrison	Street Reconstruction, curb, sidewalk	Gas Tax, TUF, SCA, SDC	\$ 250,000	2026-27	
16 - Lincoln St - Skinner to Coleman	Two Inch Overlay/Dig out	Gas Tax, TUF	\$ 100,000	2026-27	
17 - Mckenzie - Harrison to Diamond	Two Inch Overlay/Dig out	Gas Tax, TUF	\$ 100,000	2026-27	
18 - Mckenzie - Skinner to Coleman	Two Inch Overlay/Dig out	Gas Tax, TUF	\$ 100,000	2026-27	
19 - Mckenzie - Coleman to Miller	Two Inch Overlay/Dig out	Gas Tax, TUF	\$ 100,000	2026-27	\$ 762,000
20 - Street Preservation	Crack Sealing	Gas Tax, TUF	\$ 77,000	2027-28	
21 - Street Preservation	Seal Coating	Gas Tax, TUF	\$ 77,000	2027-28	
22 - Roberts Rd - South end to Roberts Ct	Two Inch Overlay	Gas Tax, TUF	\$ 150,000	2027-28	
23 - Roberts Ct - Huntly Ct to west dead end	Two Inch Overlay/Leveling	Gas Tax, TUF	\$ 150,000	2027-28	\$ 454,000
24 - Street Preservation	Crack Sealing	Gas Tax, TUF	\$ 96,000	2028-29	
25 - Street Preservation	Seal Coating	Gas Tax, TUF	\$ 16,000	2028-29	
26 - Collector Street Project - Phase II (S Coleman)	Street Reconstruction	Gas Tax, TUF, SDC, MPO	\$ 900,000	2028-29	\$ 1,012,000
27 - Street Preservation	Crack Sealing	Gas Tax, TUF	\$ 32,000	2029-30	
28 - Street Preservation	Seal Coating	Gas Tax, TUF	\$ 16,000	2029-30	
29 - Skinner St - Pearl to Lincoln	Two Inch Overlay/Dig out	Gas Tax, TUF	\$ 100,000	2029-30	
30 - Skinner St - Mckenzie to Mill	Two Inch Overlay/Dig out	Gas Tax, TUF	\$ 100,000	2029-30	
31 - Skinner St - Maple to Dixon	Street Reconstruction	Gas Tax, TUF	\$ 100,000	2029-30	
32 - Skinner St - Delaney to Pearl	Street Reconstruction	Gas Tax, TUF	\$ 100,000	2029-30	
33 - Skinner St - Lincoln to Mckenzie	Street Reconstruction	Gas Tax, TUF	\$ 100,000	2029-30	\$ 548,000
TOTAL			\$ 5,072,000		

Water

TOTAL

PROJECT TITLE/LOCATION	DESCRIPTION	FUNDING SOURCE	EST COST	FISCAL YEAR	PER FY
1 - Stallings Lane Water Supply	Well #3 Treatment systems & SCADA	Water Debt Service (rate revenues)	\$ 250,000	2024-25	
2 - PW Operations Building	Multi-Dept Operations/Storage Building	Water Rate Revenues	\$ 200,000	2024-25	
3 - PW Operations Center	Citywide Fuel Storgae/Pump System	Water Rate Revenues	\$ 50,000	2024-25	\$ 500,000
4 - Stallings Lane Water Supply	Transmission line (connection to existing system)	Water Debt Service (rate revenues)	\$ 500,000	2025-26	
5 - Coburg Industrial Waterline	12 inch waterline intertie	Water Rate Revenues	\$ 160,000	2025-26	
6 - Pioneer Valley Estates Distribution System	Replacement of existing distribution system	Fed Grant/Water Revenues	\$ 750,000	2025-26	
7 - E Dixon St Waterline Replacement	Diamond St to East End - Waterline Replacement	Water Debt Service (rate revenues)	\$ 650,000	2025-26	\$ 2,060,000
8 - Water Supply Wells #1, #2 Rehabilitation	System upgrades and rehab to existing wells	Water Rate Revenues	\$ 100,000	2026-27	
9 - Christian Wy Waterline Replacement	6 Ince pipeline replacement	Water Debt Service (rate revenues)	\$ 300,000	2026-27	
10 - Delaney St Waterline Replacement	Willamette St to Stuart St - Waterline Replacement	Water Debt Service (rate revenues)	\$ 100,000	2026-27	\$ 500,000
11 - Existing Water Storage Tanks Rehab	Replace/Retrofit (seismic) existing (2) 500k/gl tanks	Grant/Loan (rate revenues)	\$ 3,000,000	2027-28	
12 - Maple St Waterline Replacement	Coleman St to East End - Waterline Replacement	Water Debt Service (rate revenues)	\$ 250,000	2027-28	\$ 3,250,000
13 - New Water Reservior	750,000 Gallon elevated Reservior	Grant/Loan (rate revenues)	\$ 7,000,000	2028-29	\$ 7,000,000
14 - Van Duyn St Waterline	12 inch waterline intertie	Water Rate Revenues	\$ 175,000	2030 +	
15 - Vintage St Waterline	12 inch waterline intertie	Water Rate Revenues	\$ 175,000	2030 +	
16 - Waterline Pipeline Replacements	6 inch pipeline replacements in various locations	Grant/Loan (rate revenues)	\$ 1,000,000	2030 +	
17 - I-5 Transmission Line (new)	East/West Transmission Loop Line - North of Exit 199	Grant/Loan (rate revenues)	\$ 2,500,000	2030 +	\$ 3,850,000
TOTAL			\$ 17,160,000		

WasteWater

TOTAL

PROJECT TITLE/LOCATION	DESCRIPTION	FUNDING SOURCE	EST COST	FISCAL YEAR	PER FY
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1 - PW Operations Building	Multi-Dept Operations/Storage Building	WW Rate Revenues	\$ 350,000	2024-25	
2 - PW Operations Center	Citywide Fuel Storage/Pump System	WW Rate Revenues	\$ 50,000	2024-25	\$ 400,000
3 - Premier RV Septic Tank Improvement	Replacement of existing (aged/mis-sized) Septic Tank	WW Rate Revenues	\$ 450,000	2025-26	\$ 450,000
4 - Wastewater Master Plan Update	Complete Update of 20 Year Infrastructure Plan	WW Rate Revenues	\$ 100,000	2026-27	\$ 100,000
5 - WW Treatment Plant - Facilities Improvements	Headworks Structure	Grant/Loan (rate revenues)	\$ 120,000	TBD *	
6 - WW Treatment Plant - Facilities Improvements	Additional Membrane(s)	Grant/Loan (rate revenues)	\$ 600,000	TBD *	
7 - WW Treatment Plant - Facilities Improvements	Additional Treatment Basin	Grant/Loan (rate revenues)	\$ 900,000	TBD *	
8 - WW Treatment Plant - Facilities Improvements	Bridge Crane (Membrane maint)	Grant/Loan (rate revenues)	\$ 175,000	TBD *	
9 - WW Treatment Plant - Facilities Improvements	Effluent Storage/Holding Pond	Grant/Loan (rate revenues)	\$ 250,000	TBD *	
10 - WW Treatment Plant - Facilities Improvements	Effluent Cooling Systems	Grant/Loan (rate revenues)	\$ 150,000	TBD *	\$ 2,195,000
TOTAL			\$ 3,145,000		

* Timing/order of improvements dependent on final recommendations of capacity and facilities study currently underway

CITY OF COBURG

Capital Improvements Plan



Projects By Fiscal Year

Fund	Project Title/Location	Description	Funding Source	FY	Est Cost
Parks	Pavilion Park Expansion & Improvements	New Restrooms, fountain, irrigation, lighting	Oregon Parks Grant + General Fund	2024-25	\$ 400,000
Parks	Coburg Loop Path #4	Industrial Wy - Sarah path to Trails End Park	Gas Tax, TUF, SDC, MPO	2024-25	\$ 600,000
Street	Street Preservation	Crack Sealing	Gas Tax, TUF	2024-25	\$ 48,000
Street	Street Preservation	Seal Coating	Gas Tax, TUF	2024-25	\$ 25,000
Street	Industrial Way	Two Inch Overlay/Dig out	Gas Tax, TUF, SDC, MPO	2024-25	\$ 300,000
Street	N Willamette/Macy/Harrison	Street Reconstruction	Gas Tax, TUF, SCA, SDC	2024-25	\$ 700,000
Street	Collector Street Project - Phase I (N Coleman)	Street Reconstruction	Gas Tax, TUF, SDC, MPO	2024-25	\$ 500,000
Street	PW Operations Building	Multi-Dept Operations/Storage Building	Gas Tax, TUF	2024-25	\$ 100,000
Street	PW Operations Center	Citywide Fuel Storgae/Pump System	Gas Tax, TUF	2024-25	\$ 50,000
Water	Stallings Lane Water Supply	Well #3 Treatment systems & SCADA	Water Debt Service (rate revenues)	2024-25	\$ 250,000
Water	PW Operations Building	Multi-Dept Operations/Storage Building	Water Rate Revenues	2024-25	\$ 200,000
Water	PW Operations Center	Citywide Fuel Storgae/Pump System	Water Rate Revenues	2024-25	\$ 50,000
Sewer	PW Operations Building	Multi-Dept Operations/Storage Building	WW Rate Revenues	2024-25	\$ 350,000
Sewer	PW Operations Center	Citywide Fuel Storage/Pump System	WW Rate Revenues	2024-25	\$ 50,000
TOTAL for FY 2024-25					\$ 3,623,000
Admin	City Hall Improvements - HVAC	System Replacement (including ducting)	General Fund Taxes/Fees*	2025-26	\$ 125,000
Admin	City Hall Improvements - Flooring	Full carpet replacement (upstairs/downstairs)	General Fund Taxes/Fees*	2025-26	\$ 25,000
Streets	Street Preservation	Crack Sealing	Gas Tax, TUF	2025-26	\$ 27,000
Streets	Street Preservation	Seal Coating	Gas Tax, TUF	2025-26	\$ 21,000
Streets	Harrison St - Mill to Locust	Two Inch Overlay/Dig out	Gas Tax, TUF	2025-26	\$ 250,000
Streets	Locust St - Diamond to Skinner	Two Inch Overlay/Dig out	Gas Tax, TUF	2025-26	\$ 125,000
Streets	Mill St- Emerald to Coleman	Two Inch Overlay/Dig out	Gas Tax, TUF	2025-26	\$ 150,000
Water	Stallings Lane Water Supply	Transmission line (connection to existing system)	Water Debt Service (rate revenues)	2025-26	\$ 500,000
Water	Coburg Industrial Waterline	12 inch waterline intertie	Water Rate Revenues	2025-26	\$ 160,000
Water	Pioneer Valley Estates Distribution System	Replacement of existing distribution system	Fed Grant/Water Revenues	2025-26	\$ 750,000
Water	E Dixon St Waterline Replacement	Diamond St to East End - Waterline Replacement	Water Debt Service (rate revenues)	2025-26	\$ 650,000
Sewer	Premier RV Septic Tank Improvement	Replacement of existing (aged/mis-sized) Septic Tank	WW Rate Revenues	2025-26	\$ 450,000
TOTAL for FY2025-26					\$ 3,233,000
Admin	City Hall Improvements - Façade	Willamette frontage and parking/landscaping	General Fund Taxes/Fees*	2026-27	\$ 50,000
Admin	Network/Facilities Security Systems Integration		General Fund Taxes/Fees*	2026-27	\$ 75,000
Parks	Cobug Creek Park	New Park Facility	Undetermined Grant + Park SDC	2026-27	\$ 250,000
Street	Street Preservation	Crack Sealing	Gas Tax, TUF	2026-27	\$ 14,000
Street	Street Preservation	Seal Coating	Gas Tax, TUF	2026-27	\$ 98,000
Street	Locust St - Willamette to Harrison	Street Reconstruction, curb, sidewalk	Gas Tax, TUF, SCA, SDC	2026-27	\$ 250,000

Street	Lincoln St - Skinner to Coleman	Two Inch Overlay/Dig out	Gas Tax, TUF	2026-27	\$	100,000
Street	Mckenzie - Harrison to Diamond	Two Inch Overlay/Dig out	Gas Tax, TUF	2026-27	\$	100,000
Street	Mckenzie - Skinner to Coleman	Two Inch Overlay/Dig out	Gas Tax, TUF	2026-27	\$	100,000
Street	Mckenzie - Coleman to Miller	Two Inch Overlay/Dig out	Gas Tax, TUF	2026-27	\$	100,000
Water	Water Supply Wells #1, #2 Rehabilitation	System upgrades and rehab to existing wells	Water Rate Revenues	2026-27	\$	100,000
Water	Christian Wy Waterline Replacement	6 Ince pipeline replacement	Water Debt Service (rate revenues)	2026-27	\$	300,000
Water	Delaney St Waterline Replacement	Willamette St to Stuart St - Waterline Replacement	Water Debt Service (rate revenues)	2026-27	\$	100,000
Sewer	Wastewater Master Plan Update	Complete Update of 20 Year Infrastructure Plan	WW Rate Revenues	2026-27	\$	100,000
TOTAL for FY2026-27					\$	1,737,000
Street	Street Preservation	Crack Sealing	Gas Tax, TUF	2027-28	\$	77,000
Street	Street Preservation	Seal Coating	Gas Tax, TUF	2027-28	\$	77,000
Street	Roberts Rd - South end to Roberts Ct	Two Inch Overlay	Gas Tax, TUF	2027-28	\$	150,000
Street	Roberts Ct - Huntly Ct to west dead end	Two Inch Overlay/Leveling	Gas Tax, TUF	2027-28	\$	150,000
Water	Existing Water Storage Tanks Rehab	Replace/Retrofit (seismic) existing (2) 500k/gl tanks	Grant/Loan (rate revenues)	2027-28	\$	3,000,000
Water	Maple St Waterline Replacement	Coleman St to East End - Waterline Replacement	Water Debt Service (rate revenues)	2027-28	\$	250,000
TOTAL for FY2027-28					\$	3,704,000
Street	Street Preservation	Crack Sealing	Gas Tax, TUF	2028-29	\$	96,000
Street	Street Preservation	Seal Coating	Gas Tax, TUF	2028-29	\$	16,000
Street	Collector Street Project - Phase II (S Coleman)	Street Reconstruction	Gas Tax, TUF, SDC, MPO	2028-29	\$	900,000
Water	New Water Reservoir	750,000 Gallon elevated Reservoir	Grant/Loan (rate revenues)	2028-29	\$	7,000,000
TOTAL for FY2028-29					\$	8,012,000
Parks	Trails End Park - Phase II	Viewing platforms, paths, benches, signage	Undetermined Grant + Park SDC	2029-30	\$	250,000
Street	Street Preservation	Crack Sealing	Gas Tax, TUF	2029-30	\$	32,000
Street	Street Preservation	Seal Coating	Gas Tax, TUF	2029-30	\$	16,000
Street	Skinner St - Pearl to Lincoln	Two Inch Overlay/Dig out	Gas Tax, TUF	2029-30	\$	100,000
Street	Skinner St - Mckenzie to Mill	Two Inch Overlay/Dig out	Gas Tax, TUF	2029-30	\$	100,000
Street	Skinner St - Maple to Dixon	Street Reconstruction	Gas Tax, TUF	2029-30	\$	100,000
Street	Skinner St - Delaney to Pearl	Street Reconstruction	Gas Tax, TUF	2029-30	\$	100,000
Street	Skinner St - Lincoln to Mckenzie	Street Reconstruction	Gas Tax, TUF	2029-30	\$	100,000
TOTAL for FY2029-30					\$	798,000
Parks	Julia Morneau Heritage Park	New park (no land purchase)	Undetermined Grant + Park SDC	2030 +	\$	250,000
Parks	Southside Neighborhood Park	New Park (land + improvements)	Undetermined Grant + Park SDC	2030 +	\$	350,000
Parks	Northside Neighborhood Park	New Park (land + improvements)	Undetermined Grant + Park SDC	2030 +	\$	350,000
Parks	Westside Mini-Park	New Park (land + improvements)	Undetermined Grant + Park SDC	2030 +	\$	150,000
Parks	Southwest Mini-Park	New Park (land + improvements)	Undetermined Grant + Park SDC	2030 +	\$	150,000
Parks	Coburg Loop 5	Path extesion south to Eugene	Undetermined Grant + Park/Trans SDC	2030 +	\$	1,500,000
Water	Van Duyn St Waterline	12 inch waterline intertie	Water Rate Revenues	2030 +	\$	175,000
Water	Vintage St Waterline	12 inch waterline intertie	Water Rate Revenues	2030 +	\$	175,000
Water	Waterline Pipeline Replacements	6 inch pipeline replacements in various locations	Grant/Loan (rate revenues)	2030 +	\$	1,000,000
Water	I-5 Transmission Line (new)	East/West Transmission Loop Line - North of Exit 199	Grant/Loan (rate revenues)	2030 +	\$	2,500,000

Sewer	WW Treatment Plant - Facilities Improvements	Headworks Structure	Grant/Loan (rate revenues)	TBD *	\$	120,000
Sewer	WW Treatment Plant - Facilities Improvements	Additional Membrane(s)	Grant/Loan (rate revenues)	TBD *	\$	600,000
Sewer	WW Treatment Plant - Facilities Improvements	Additional Treatment Basin	Grant/Loan (rate revenues)	TBD *	\$	900,000
Sewer	WW Treatment Plant - Facilities Improvements	Bridge Crane (Membrane maint)	Grant/Loan (rate revenues)	TBD *	\$	175,000
Sewer	WW Treatment Plant - Facilities Improvements	Effluent Storage/Holding Pond	Grant/Loan (rate revenues)	TBD *	\$	250,000
Sewer	WW Treatment Plant - Facilities Improvements	Effluent Cooling Systems	Grant/Loan (rate revenues)	TBD *	\$	150,000
TOTAL for 2030+					\$	8,795,000



COBURG CITY COUNCIL

ACTION ITEM

Municipal Audit Services Contract

Meeting Date	Staff Contact	Email
April 9, 2024	Adam Hanks, City Administrator Greg Peck, Public Works Director	Adam.Hanks@ci.coburg.or.us Gregory.Peck@ci.coburg.or.us

REQUESTED COUNCIL ACTION

Staff requests Council approval for renewal of a contract for municipal audit services with Umpqua Valley Financial for the FY23-24 audit for the City of Coburg and the Coburg Urban Renewal Agency

Suggested Motion

I move to approve the proposed Umpqua Valley Financial contract for audit services in the amount not to exceed \$32,340 (City) and \$6,000 (URA).

BACKGROUND

Umpqua Valley Financial has provided municipal audit services for the City of Coburg for a number of years. The City completed a request for proposals process for audit services in 2021 to review market rates/costs for this service and selected UVF from the group of qualified audit firms that responded.

RECOMMENDATION AND ALTERNATIVES

Staff recommends approval of these contracts as presented and is excited to work with the UVF audit team with more internal, Coburg specific staff experience and knowledge which we expect will result in incrementally “deeper dives” into the City’s financial policies and accounting procedures than have been able to be accomplished in recent years.

BUDGET / FINANCIAL IMPACT

The cost of audit services has been consistent over the recent past and funds have been appropriated in the City general fund and URA budget for the proposed expenses to be incurred.

PUBLIC INVOLVEMENT

Request for Proposals process completed in 2021.

NEXT STEPS

Upon authorization, staff will execute the proposed contract and finalize the FY23-24 audit schedule, likely to commence in early August of this year.

ATTACHMENTS

1. Draft UVF Engagement letter for City Audit
2. Draft UVF Contract for City Audit
3. Draft UVF Engagement letter for URA Audit
4. Draft UVF Contract for URA Audit



April 10th, 2024

City of Coburg, Oregon

Attn: City Council and Adam Hanks, City Administrator

PO Box 8316

Coburg, OR 97408

We are pleased to confirm our understanding of the services we are to provide the City of Coburg for the fiscal year ended June 30, 2024.

Audit Scope and Objectives

We will audit the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information (if applicable), and the disclosures, which collectively comprise the basic financial statements of the City of Coburg as of and for the fiscal year ended June 30, 2024. Accounting standards generally accepted in the United States of America (GAAP) provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the City of Coburg's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the City of Coburg's RSI in accordance with auditing standards generally accepted in the United States of America (GAAS). These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient appropriate evidence to express an opinion or provide any assurance. The following RSI is required by GAAP and will be subjected to certain limited procedures, but will not be audited:

- 1) Management's Discussion and Analysis
- 2) Pension and/or OPEB schedules accordingly

We have also been engaged to report on supplementary information other than RSI that accompanies the City of Coburg's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with GAAS, and we will provide an opinion on it in relation to the financial statements as a whole in a separate written report accompanying our auditor's report on the financial statements OR in a report combined with our auditor's report on the financial statements:

- 1) Schedules of Revenues, Expenditures, Changes in fund balance - budget versus actual

In connection with our audit of the basic financial statements, we will read the following other information and consider whether a material inconsistency exists between the other information and the basic financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

- 1) Debt Schedules, if in existence

In accordance with the *Minimum Standards for Audits of Oregon Municipal Corporations*, we will issue a report on our consideration of the City of Coburg's compliance with certain provisions of laws and regulations, including the provisions of Oregon Revised Statutes as specified in Oregon Administrative Rules. The purpose of that report is to describe the scope of our testing of compliance and the results of that testing and not to provide an opinion on the government's compliance.

The objectives of our audit are to obtain reasonable assurance as to whether the financial statements as a whole are free from material misstatement, whether due to fraud or error; issue an auditor's report that includes our opinion about whether your financial statements are fairly presented, in all material respects, in conformity with GAAP; and report on the fairness of the supplementary information referred to in the above paragraph when considered in relation to the financial statements as a whole. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. Misstatements, including omissions, can arise from fraud or error and are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment of a reasonable user made based on the financial statements.

At this time, it is our understanding that the City of Coburg does not require a Single Audit. If, during our Engagement we determine a Single Audit is required, we will issue an updated Engagement Letter indicating the updated Scope and Objectives as required.

Auditor's Responsibilities for the Audit of the Financial Statements

We will conduct our audit in accordance with GAAS and will include tests of your accounting records and other procedures we consider necessary to enable us to express such opinions. As part of an audit in accordance with GAAS, we exercise professional judgment and maintain professional skepticism throughout the audit.

We will evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management. We will also evaluate the overall presentation of the financial statements, including the disclosures, and determine whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is an unavoidable risk that some material misstatements may not be detected by us, even though the audit is properly planned and performed in accordance with GAAS. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform the appropriate level of management of any material errors, fraudulent financial reporting, or misappropriation of assets that comes to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

We will also conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the government's ability to continue as a going concern for a reasonable period of time.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of receivables and certain assets and liabilities

by correspondence with selected customers, creditors, and financial institutions. We will also request written representations from your attorneys as part of the engagement.

We may, from time to time and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

Our audit of the financial statements does not relieve you of your responsibilities.

Audit Procedures—Internal Control

We will obtain an understanding of the government and its environment, including internal control relevant to the audit, sufficient to identify and assess the risks of material misstatement of the financial statements, whether due to error or fraud, and to design and perform audit procedures responsive to those risks and obtain evidence that is sufficient and appropriate to provide a basis for our opinions. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentation, or the override of internal control. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. Accordingly, we will express no such opinion. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards.

Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City of Coburg's compliance with the provisions of applicable laws, regulations, contracts, and agreements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion.

Other Services

We will also prepare the financial statements of the City of Coburg in conformity with accounting principles generally accepted in the United States of America based on information provided by you.

We will perform the services in accordance with applicable professional standards. The other services are limited to the financial statement services previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

You agree to assume all management responsibilities for the financial statement preparation services and any other nonattest services we provide; oversee the services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of the services; and accept responsibility for them.

Responsibilities of Management for the Financial Statements

Our audit will be conducted on the basis that you acknowledge and understand your responsibility for designing, implementing, and maintaining internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, including monitoring ongoing activities; for the selection and application of accounting principles; and for the preparation and fair presentation of the financial statements in conformity with accounting principles generally accepted in the United States of America with the oversight of those charged with governance.

Management is responsible for making drafts of financial statements, all financial records, and related information available to us and for the accuracy and completeness of that information (including information from outside of the general and subsidiary ledgers). You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, identification of all related parties and all related-party relationships and transactions, and other matters; (2) additional information that we may request for the purpose of the audit; and (3) unrestricted access to

persons within the government from whom we determine it necessary to obtain audit evidence. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements of each opinion unit taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws and regulations.

You are responsible for the preparation of the supplementary information in conformity with accounting principles generally accepted in the United States of America (GAAP). You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon or make the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information is issued with our report thereon. Your responsibilities include acknowledging to us in the representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Engagement Administration, Fees, and Other

We understand that your employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any documents selected by us for testing.

The audit documentation for this engagement is the property of Umpqua Valley Financial, LLC and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to the Oregon Secretary of State or its designee. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Umpqua Valley Financial, LLC personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the Oregon Secretary of State or its designee. The Oregon Secretary of State or its designee may intend or decide to distribute the copies or information contained therein to others, including other governmental agencies.

Steve Tuchscherer is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it. We expect to begin our audit on approximately August 1st, 2024 and to issue our reports no later than December 31st, 2024. We will be in communication with Staff as these schedules are refined.

Our fee for services will be at our standard hourly rates plus out-of-pocket costs (such as report reproduction, word processing, postage, travel, copies, telephone, etc.) except that we agree that our gross fee, including expenses, will not exceed \$32,340. If a Single Audit is required, the fee would increase by \$5,250 and a new engagement letter will be issued accordingly. Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes 30 days or more overdue and may not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination. The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

Reporting

We will issue a written report upon completion of our audit of the City of Coburg's financial statements. Our report will be addressed to management and those charged with governance of the City of Coburg. Circumstances may arise in which our report may differ from its expected form and content based on the results of our audit. Depending on the nature of these circumstances, it may be necessary for us to modify our opinions, add a separate section, or add an emphasis-of-matter or other-matter paragraph to our auditor's report, or if necessary, withdraw from this engagement. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or withdraw from this engagement.

We appreciate the opportunity to be of service to the City of Coburg and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the attached copy and return it to us.

Very truly yours,



Steve Tuchscherer, CPA PC
Umpqua Valley Financial, LLC

RESPONSE:

This letter correctly sets forth the understanding of the City of Coburg, Oregon.

Management signature: _____

Title: _____

Date: _____



April 10th, 2024

Urban Renewal Agency of the City of Coburg, Oregon
Attn: Agency Officials and Adam Hanks, City Administrator
91136 N. Willamette Street
PO Box 8316
Coburg, Oregon 97408

We are pleased to confirm our acceptance and understanding of the services we are to provide for the year ended June 30th, 2024

We will prepare the financial statements of the governmental activities, the business- type activities, each major fund, and the aggregate remaining fund information of the Urban Renewal Agency of the City of Coburg (City of Coburg URA), for the year ended June 30th, 2024, and the related notes to the financial statements, and perform a review engagement with respect to those financial statements.

Our Responsibilities

The objective of our engagement is to—

- 1) 1) prepare financial statements in accordance with accounting principles generally accepted in the United States of America based on information provided by you, and
- 2) 2) obtain limited assurance as a basis for reporting whether we are aware of any material modifications that should be made to the financial statements in order for them to be in accordance with accounting principles generally accepted in the United States of America.

We will conduct our review engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA and comply with applicable professional standards, including the AICPA's Code of Professional Conduct, and its ethical principles of integrity, objectivity, professional competence, and due care, when preparing the financial statements and performing the review engagement.

A review engagement includes primarily applying analytical procedures to your financial data and making inquiries of management. A review engagement is substantially less in scope than an audit engagement, the objective of which is the expression of an opinion regarding the financial statements as a whole. A review engagement does not contemplate obtaining an understanding of the Agency's internal control; assessing fraud risk; testing accounting records by obtaining sufficient appropriate audit evidence through inspection, observation, confirmation, or other examination of source documents; or other procedures ordinarily performed in an audit engagement. Accordingly, we will not express an opinion regarding the financial statements.

Our engagement cannot be relied upon to identify or disclose any financial statement misstatements, including those caused by fraud or error, or to identify or disclose any wrongdoing within the Agency or noncompliance with laws and regulations. However, we will inform the appropriate level of management of any material errors and any evidence or information that comes to our attention during the performance of our review procedures that indicates fraud may have occurred. In addition, we will inform you of any evidence or information that comes to our attention during the performance of our review procedures regarding noncompliance with laws and regulations that may have occurred, unless they are clearly inconsequential. We have no responsibility to identify and communicate deficiencies or material weaknesses in your internal control as part of this engagement.

We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities since performing those procedures or taking such action would impair our independence.

Your Responsibilities

The engagement to be performed is conducted on the basis that you acknowledge and understand that our role is to prepare financial statements in accordance with accounting principles generally accepted in the United States of America and to obtain limited assurance as a basis for reporting whether we are aware of any material modifications that should be made to the financial statements in order for the statements to be in accordance with accounting principles generally accepted in the United States of America. You have the following overall responsibilities that are fundamental to our undertaking the engagement in accordance with SSARS:

- 1) The selection of accounting principles generally accepted in the United States of America as the financial reporting framework to be applied in the preparation of the financial statements.
- 2) The preparation and fair presentation of financial statements in accordance with accounting principles generally accepted in the United States of America and the inclusion of all informative disclosures that are appropriate for accounting principles generally accepted in the United States of America.

- 3) The design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error.
- 4) The prevention and detection of fraud.
- 5) To ensure that the Agency complies with the laws and regulations applicable to its activities.
- 6) The accuracy and completeness of the records, documents, explanations, and other information, including significant judgments, you provide to us for the engagement.
- 7) To provide us with—
 - access to all information of which you are aware is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, and other matters.
 - additional information that we may request from you for the purpose of the review engagement.
 - unrestricted access to persons within the Agency of whom we determine it necessary to make inquiries.
- 8) To provide us, at the conclusion of the engagement, with a letter that confirms certain representations made during the review.

You are also responsible for all management decisions and responsibilities and for designating an individual with suitable skills, knowledge, and experience to oversee our preparation of your financial statements. You are responsible for evaluating the adequacy and results of the services performed and accepting responsibility for such services.

Our Report

We will issue a written report upon completion of our review of the City of Coburg URA's financial statements. Our report will be addressed to the Agency Officials of the City of Coburg URA. We cannot provide assurance that an unmodified accountant's review report will be issued. Circumstances may arise in which it is necessary for us to report known departures from accounting principles generally accepted in the United States of America, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement. If, for any reason, we are unable to complete the review of your financial statements, we will not issue a report on such statements as a result of this engagement.

You agree to include our accountant's review report in any document containing financial statements that indicates that such financial statements have been reviewed by us and, prior to inclusion of the report, to ask our permission to do so.

Other Relevant Information

Steve Tuchscherer is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it.

We estimate that our fees for these services will be \$6,000 for the financial statement preparation and review. The fee estimate is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the work performed. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs. Our invoices for these fees will be rendered as work progresses and are payable on presentation.

You agree to hold us harmless and to release, indemnify, and defend us from any liability or costs, including attorney's fees, resulting from management's knowing misrepresentations to us.

We appreciate the opportunity to be of service to you and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you acknowledge and agree with the terms of our engagement as described in this letter, please sign and return it to us.

Sincerely,



Umpqua Valley Financial

Acknowledged:

Urban Renewal Agency of the City of Coburg, Oregon

By: _____

Title: _____

Date: _____

C O N T R A C T

THIS CONTRACT, made this 10th day of April 2024, in accordance with the requirements of Oregon Revised Statutes Chapter 297.405 through 297.555, between UMPQUA VALLEY FINANCIAL, LLC of Roseburg, Oregon, and CITY OF COBURG, Oregon, provides as follows:

1. It is hereby agreed that UMPQUA VALLEY FINANCIAL, LLC shall conduct an audit of the accounts and fiscal affairs of CITY OF COBURG, Oregon, for the fiscal year ending June 30, 2024 and annually thereafter, in accordance with generally accepted auditing standards; Standards for Audits of Governmental Organizations, Programs, Activities, and Functions; the Guidelines for Financial and Compliance Audits of Federally Assisted Programs.; the Provisions of Uniform Guidance, 'The AICPA Industry Guide, Audits of States, Local Governments, and Non-Profit Organizations'; and the Minimum Standards for Audits of Municipal Corporations, as prescribed by law. The audit shall be undertaken in order to express an opinion on the financial statements of CITY OF COBURG, Oregon, and to determine if CITY OF COBURG has complied substantially with appropriate legal provisions.

2. UMPQUA VALLEY FINANCIAL, LLC agrees that the services to be performed under this contract shall be rendered by Steve Tuchscherer, CPA or under his personal supervision, and that the work will be faithfully performed with care and diligence.

3. It is understood and agreed that, should unusual conditions arise or be encountered during the course of the audit whereby the services of UMPQUA VALLEY FINANCIAL, LLC are necessary beyond the extent of the work contemplated, written notification of such unusual conditions shall be delivered to

CITY OF COBURG, Oregon, who shall instruct UMPQUA VALLEY FINANCIAL, LLC in writing, concerning such additional services, and that a signed copy of each such notification and instruction shall be delivered immediately to the Secretary of State by the Party issuing the same.

4. The audit shall be started as soon after this contract is executed as is agreeable to the Parties hereto and shall be completed and a written report thereon delivered within a reasonable time, but not later than six months after the close of the audit period covered by this contract. Adequate copies of such report shall be delivered to CITY OF COBURG, Oregon, and its form and content shall be in accordance with and not less than that required by the Minimum Standards for Audits of Oregon Municipal Corporations.

5. It is understood and agreed that CITY OF COBURG, Oregon, is responsible for such financial statements as may be necessary to fully disclose and fairly present the results of operations for the period under audit and the financial condition at the end of that period. Should such financial statements not be prepared and presented within a reasonable period of time, it is understood that UMPQUA VALLEY FINANCIAL, LLC shall draft them for CITY OF COBURG, Oregon. The cost of preparing such financial statements shall be included in the fee for conducting the audit as set forth in Paragraph 7 below.

6. It is understood and agreed that either Party may cancel this contract by giving notice in writing to the other Party at least ninety days prior to July 1 of any year.

7. In consideration of the faithful performance of the conditions, covenants, and undertakings herein set forth, CITY OF COBURG, Oregon, hereby agrees to pay UMPQUA VALLEY FINANCIAL, LLC a

reasonable fee not to exceed \$32,340 for fiscal year ending June 30, 2024. If a Single Audit is required, the fee will increase by \$5,250. CITY OF COBURG, Oregon, hereby affirms that proper provision for the payment of such fees has been or will be duly made and that funds for the payment thereof are or will be made legally available.

UMPQUA VALLEY FINANCIAL, LLC CITY OF COBURG, Oregon

By: 

By: _____

Date: _____

CONTRACT

THIS CONTRACT, made this 10th day of April 2024, in accordance with the requirements of Oregon Revised Statutes Chapter 297.405 through 297.555, between UMPQUA VALLEY FINANCIAL, LLC of Roseburg, Oregon, and the URBAN RENEWAL AGENCY of the CITY OF COBURG, Oregon provides as follows:

1. It is hereby agreed that UMPQUA VALLEY FINANCIAL, LLC shall conduct a review of the accounts and fiscal affairs of the URBAN RENEWAL AGENCY of the CITY OF COBURG, Oregon, for the period ending June 30th, 2024 and annually thereafter, in accordance with the Minimum Standards for Review of Municipal Corporations, as prescribed by law. The review shall be undertaken in order to express an opinion on the financial statements of the URBAN RENEWAL AGENCY of the CITY OF COBURG, Oregon, and to determine if the URBAN RENEWAL AGENCY of the CITY OF COBURG has complied substantially with appropriate legal provisions.

2. UMPQUA VALLEY FINANCIAL, LLC agrees that the services to be performed under this contract shall be rendered by Steve Tuchscherer, CPA or under his personal supervision, and that the work will be faithfully performed with care and diligence.

3. It is understood and agreed that, should unusual conditions arise or be encountered during the course of the review whereby the services of UMPQUA VALLEY FINANCIAL, LLC are necessary beyond the extent of the work contemplated, written notification of such unusual conditions shall be delivered to the URBAN RENEWAL AGENCY of the CITY OF COBURG, Oregon, who shall instruct UMPQUA VALLEY FINANCIAL, LLC in writing, concerning such additional services, and

that a signed copy of each such notification and instruction shall be delivered immediately to the Secretary of State by the Party issuing the same.

4. The review shall be started as soon after this contract is executed as is agreeable to the Parties hereto and shall be completed and a written report thereon delivered within a reasonable time, but not later than six months after the close of the review period covered by this contract. Adequate copies of such report shall be delivered to the URBAN RENEWAL AGENCY of the CITY OF COBURG, Oregon, and its form and content shall be in accordance with and not less than that required by the Minimum Standards for Audits of Oregon Municipal Corporations.

5. It is understood and agreed that the URBAN RENEWAL AGENCY of the CITY OF COBURG, Oregon, is responsible for such financial statements as may be necessary to fully disclose and fairly present the results of operations for the period under review and the financial condition at the end of that period. Should such financial statements not be prepared and presented within a reasonable period of time, it is understood that UMPQUA VALLEY FINANCIAL, LLC shall draft them for the URBAN RENEWAL AGENCY of the CITY OF COBURG, Oregon. The cost of preparing such financial statements shall be included in the fee for conducting the review as set forth in Paragraph 7 below.

6. It is understood and agreed that either Party may cancel this contract by giving notice in writing to the other Party at least ninety days prior to July 1 of any year.

7. In consideration of the faithful performance of the conditions, covenants, and undertakings herein set forth, for the URBAN RENEWAL AGENCY of the CITY OF COBURG, Oregon, hereby agrees to pay UMPQUA VALLEY FINANCIAL, LLC a reasonable fee not to exceed \$6,000 for the fiscal year

ending June 30th, 2024 and the URBAN RENEWAL AGENCY of the CITY OF COBURG, Oregon, hereby affirms that proper provision for the payment of such fee has been or will be duly made, and that funds for the payment thereof are or will be made legally available.

UMPQUA VALLEY FINANCIAL, LLC
(Reviewer)

URBAN RENEWAL AGENCY of the CITY OF COBURG, Oregon
(Client)

By 

By _____

Date _____

CITY OF COBURG



COBURG, OREGON

Annual Financial Report

June 30, 2023

CITY OF COBURG

P.O. Box 8316
Coburg, OR 97408
(541) 682-7870

MAYOR AND CITY COUNCIL

NANCY BELL PO Box 8316, Coburg, OR 97408	Mayor
JOHN LEHMAN PO Box 8316, Coburg, OR 97408	Councilor
KYLE BLAIN PO Box 8316, Coburg, OR 97408	Councilor
JOHN FOX PO Box 8316, Coburg, OR 97408	Councilor
CLAIRE SMITH PO Box 8316, Coburg, OR 97408	Councilor
CATHY ENGBRETSON PO Box 8316, Coburg, OR 97408	Councilor
ALAN WELLS PO Box 8316, Coburg, OR 97408	Councilor

ADMINISTRATION

ADAM HANKS PO Box 8316, Coburg, OR 97408	City Administrator
GREGORY PECK PO Box 8316, Coburg, OR 97408	Finance Director

CITY OF COBURG

AUDIT REPORT

JUNE 30, 2023

Item 10.

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CITY OF COBURG

AUDIT REPORT

JUNE 30, 2023

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INDEPENDENT AUDITOR’S REPORT

To the Honorable Mayor and City Council
City of Coburg, Oregon

Report on the Audit of the Financial Statements

Opinions

We have audited the accompanying financial statements of the governmental activities, business-type activities, each major fund, and the aggregate remaining fund information of the City of Coburg as of and for the year ended June 30, 2023, and the related notes to the financial statements, which collectively comprise the City of Coburg’s basic financial statements, as listed in the table of contents.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of City of Coburg as of June 30, 2023, and the respective changes in financial position and, where applicable, cash flows thereof, for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis of Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in Auditor’s Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Agency and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the City of Coburg’s ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditor’s Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements are free from material misstatement, whether due to fraud or error and to issue an auditor’s report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statement, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the City of Coburg's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the City of Coburg's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 1-12, schedules of revenues, expenditures, and changes in fund balances – budget and actuals on pages 64-66, and the pension and OPEB schedules on pages 67-71 be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements is required by the Governmental Accounting Standards Board, which considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context.

We have applied certain limited procedures to the management's discussion and analysis and the pension and OPEB schedules in accordance with the auditing standards generally accepted in the United States of America, which consisted principally of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the City's basic financial statements. The schedules of revenues, expenditures, and changes in fund balances – budget and actuals described on pages 64-66 are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the basic financial statements. The schedules of revenues, expenditures and changes in fund balances – budget and actuals have been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the schedules of revenues, expenditures, and changes in fund balances – budget and actuals are fairly stated, in all material respects, in relation to the basic financial statements as a whole.

Supplementary Information

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the City of Coburg's basic financial statements. The supplementary information on pages 73-74 is presented for purposes of additional analysis and is not a required part of the basic financial statements of the City of Coburg.

The supplementary information on pages 73-74 is the responsibility of management and was derived from and relate directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain other procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the supplementary information is fairly stated in all material respects in relation to the financial statements taken as a whole.

Other Information

Management is responsible for the other information included in the annual report. The other information comprises the introductory and statistical sections and additional schedules listed in the Other Information section of the Table of Contents but does not include the basic financial statements and our auditor's report thereon. Our opinions on the basic financial statements do not cover the other information, and we do not express an opinion of any form of assurance thereon.

In connection with our audit of the basic financial statements, our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the basic financial statements, or whether the other information otherwise appears to be materially misstated. If based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

Reports on Other Legal and Regulatory Requirements

In accordance with the *Minimum Standards for Audits of Oregon Municipal Corporations*, we have issued our report dated March 22, 2024, on our consideration of the City of Coburg's compliance with certain provisions of laws and regulations, including the provisions of Oregon Revised Statutes as specified in Oregon Administrative Rules. The purpose of that report is to describe the scope of our testing of compliance and the results of that testing and not to provide an opinion on the City's compliance.



Steve Tuhscherer, CPA
Umpqua Valley Financial, LLC
Roseburg, Oregon
March 22, 2024

MANAGEMENT'S
DISCUSSION
AND ANALYSIS

CITY OF COBURG

Management's Discussion and Analysis (MD&A)

For the Fiscal Year Ended June 30, 2023

Unaudited

The management discussion and analysis of the City of Coburg, Oregon (the City) financial performance provides an overview of the City's financial activities for the fiscal year that ended June 30, 2023. This discussion and analysis evaluate the City's financial performance. Readers should also review the basic financial statements and notes to enhance their understanding of the City's financial performance.

FINANCIAL HIGHLIGHTS

Key financial highlights for the fiscal year ended June 30, 2023, are as follows:

- The City's net position increased by \$1,003,549, a 5.6% increase from the previous year. This increase is primarily the result of a growth in capital assets of \$ 2,631,232.
- Total revenues, not including transfers, for the City was \$6,576,694. That is a increase from the previous year total revenue of \$5,773,879.
- The City's total assets as indicated on the statement of net position were \$37,547,537 at year end. This is a \$2,205,971 increase over prior year end.
- The City's total liabilities as indicated on the statement of net position were \$18,663,189 at year end. This is a \$1,440,977 increase over prior year end.

OVERVIEW OF THE FINANCIAL STATEMENTS

Management's Discussion and Analysis introduce the City's basic financial statements. The basic financial statements include: 1) government-wide financial statements, 2) fund financial statements, and 3) notes to the basic financial statements. This report also includes required supplementary information, other supplementary data, and accompanying information to supplement the basic financial statements.

Government-wide Financial Statements

The first of the government-wide statements is the *Statement of Net Position*. The City-wide statement of financial position presents information including all the City's assets, deferred inflows, deferred outflows, liabilities, and the resulting net position. Over time, increases or decreases in net position may serve as a useful indicator of whether the City's financial position is improving or deteriorating. Evaluation of the City's overall economic health would extend to other non-financial factors such as the condition of buildings, and water and sewer systems facilities.

The second government-wide statement is the *Statement of Activities*, which reports how the City's net position changed during the current fiscal year. All current-year revenues and expenses are included regardless of when cash is received or paid. An important purpose of the design of the *Statement of Activities* is to show the financial reliance of the City's distinct activities or functions that are principally supported by user fee revenues, intergovernmental revenues from grants, and property tax revenues. The city's governmental activities include general government activities, street construction and maintenance, police services, and providing resources for libraries, culture, and recreation. The proprietary activities of the City include water and sewer utilities.

CITY OF COBURG

Management's Discussion and Analysis (MD&A) For the Fiscal Year Ended June 30, 2023 Unaudited

Fund Financial Statements

A fund is an accountability unit used to maintain control over resources segregated for specific activities or objectives. The City uses fund accounting to ensure and demonstrate compliance with finance-related laws and regulations. Within the basic financial statements, Fund Financial Statements focus on the City's most significant funds rather than the City. Major funds are separately reported, while all others are combined into a single, aggregated presentation. Individual fund data for non-major funds is provided in the form of combining individual fund statements in a later section of this report. The City reports three types of funds:

Governmental funds focus on how money flows into and out of those funds and the balances left at year-end available for spending in future periods. Unlike government-wide financial statements, these statements report short-term fiscal accountability focusing on the use of spendable resources during the year and balances of spendable resources available at the end of the fiscal year.

Since the government-wide focus includes the long-term view, comparisons between these two perspectives may provide insight into the long-term impact of short-term financing decisions. The governmental fund balance sheet and the governmental fund statement of revenues, expenditures, and changes in fund balances provide a reconciliation to government-wide statements to assist in understanding the differences between these two perspectives.

Proprietary funds are used to report the functions presented as business-type activities in the government-wide financial statements, only in more detail. The City maintains one type of proprietary fund - enterprise funds. The City uses enterprise funds to account for water and sewer operations. The proprietary financial statements provide separate information for the Water and Sewer Fund. These statements and schedules demonstrate compliance with the City's adopted and final revised budget.

Fiduciary Funds such as custodial funds are reported in the fiduciary fund financial statement but are excluded from government-wide reporting. Fiduciary fund financial statements report only net assets and net liabilities.

Notes to the Financial Statements

The accompanying notes to the basic financial statements provide information essential to a full understanding of the government-wide and fund financial statements. The notes to the basic financial statements begin immediately following the basic financial statements.

Other Information

In addition to the basic financial statements, budgetary comparison schedules are included as Required Supplementary Information for the General Fund, the Street Fund, and the Coburg Urban Renewal Agency Fund. The Required Supplementary Information section immediately follows the Notes to the Financial Statements.

Budgetary comparison schedules for the City's funds not included in the Required Supplementary Information section can be found in the Supplementary Information section, combining statements and additional supporting schedules. These statements and schedules immediately follow this report's Required Supplementary Information section.

The budgetary comparison schedules demonstrate compliance with the City's adopted and final budget.

CITY OF COBURG

Management's Discussion and Analysis (MD&A)
For the Fiscal Year Ended June 30, 2023
Unaudited

FINANCIAL ANALYSIS OF THE CITY AS A WHOLE

Recall that the Statement of Net Position provides the perspective of the City as a whole. Net position may serve over time as a useful indicator of a government's financial position.

The City's net position at fiscal year-end is \$18,992,229, an increase of \$1,003,549 (5.6%). Impacting factors include increased capital assets and decreased bonds payable, net of premium.

A significant portion of the City's net position reflects its investment in capital assets (e.g., land and improvements, buildings and improvements, improvements other than buildings, vehicles, and machinery and equipment); less any related debt used to acquire those still outstanding assets. The City uses these capital assets to provide services to its citizens; consequently, these assets are not available for future spending.

Although the City's investment in its capital assets is reported net of related debt, it should be noted that the resources needed to repay this debt must be provided from other sources since the capital assets themselves cannot be used to liquidate these liabilities.

The City's financial position is the product of several financial transactions, including the net results of activities, the acquisition and payment of a debt, the acquisition and disposal of capital assets, and the depreciation of capital assets.

The following table provides a summary of the City's net position for the current and prior year.

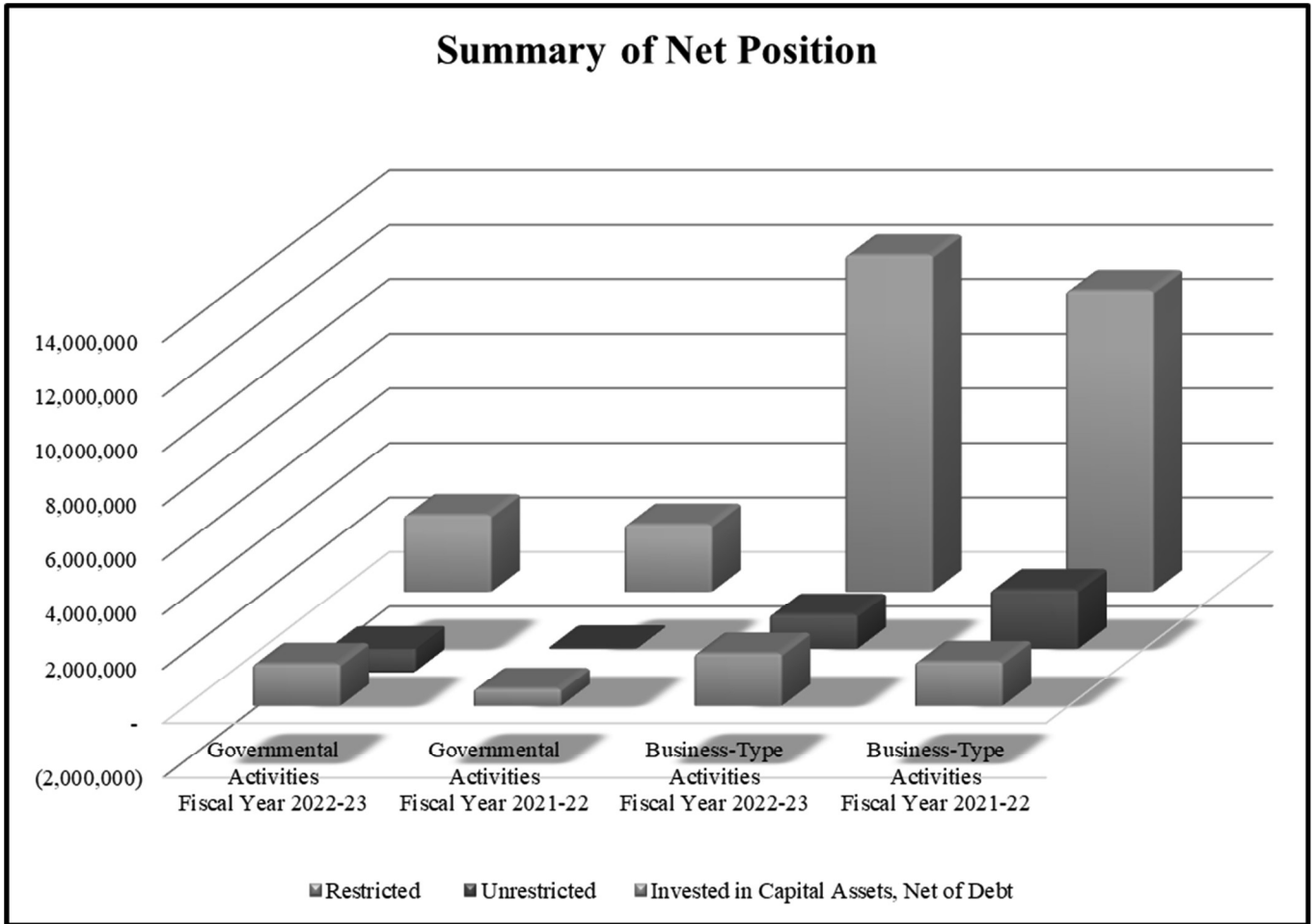
Summary of Net Position

	Governmental Activities		Business-type Activities		Total	
	2023	2022	2023	2022	2023	2022
Assets						
Current and Other Assets	\$ 1,774,597	\$ 1,783,879	\$ 3,737,746	\$ 4,153,725	\$ 5,512,343	\$ 5,937,604
Capital Assets	4,315,798	2,982,609	27,719,395	26,421,352	32,035,193	29,403,961
Total Assets	6,090,395	4,766,488	31,457,141	30,575,077	37,547,536	35,341,566
Deferred Outflow of Resources	622,051	797,879	49,923	68,187	671,974	866,066
Liabilities						
Current Liabilities	388,698	291,775	1,041,483	897,726	1,430,181	1,189,501
Long-Term Liabilities	2,476,336	1,366,081	14,756,672	14,666,630	17,233,008	16,032,711
Total Liabilities	2,865,034	1,657,856	15,798,155	15,564,356	18,663,189	17,222,212
Deferred Inflow of Resources	396,266	744,577	167,826	252,161	564,092	996,738
Net Position						
Net Investment in Capital Assets	2,823,327	2,474,402	12,342,385	11,030,083	15,165,712	13,504,485
Restricted	1,552,952	636,485	1,933,256	1,626,183	3,486,208	2,262,668
Unrestricted	(925,134)	51,045	1,265,442	2,170,481	340,308	2,221,526
Total Net Position	\$ 3,451,145	\$ 3,161,932	\$ 15,541,083	\$ 14,826,747	\$ 18,992,228	\$ 17,988,680

CITY OF COBURG

**Management’s Discussion and Analysis (MD&A)
For the Fiscal Year Ended June 30, 2023
Unaudited**

See the chart below to gain an understanding of the City’s actual financial position and how each component relates to the activities performed.



CITY OF COBURG

Management's Discussion and Analysis (MD&A)
For the Fiscal Year Ended June 30, 2023
Unaudited

Changes in net position - The City's total revenues for the fiscal year ended June 30, 2023, were \$6,576,694. The total cost of all programs and services was \$5,551,326. The following table shows a comparative analysis of government-wide revenues, expenses, and changes in net position.

Summary of Changes in Net Position

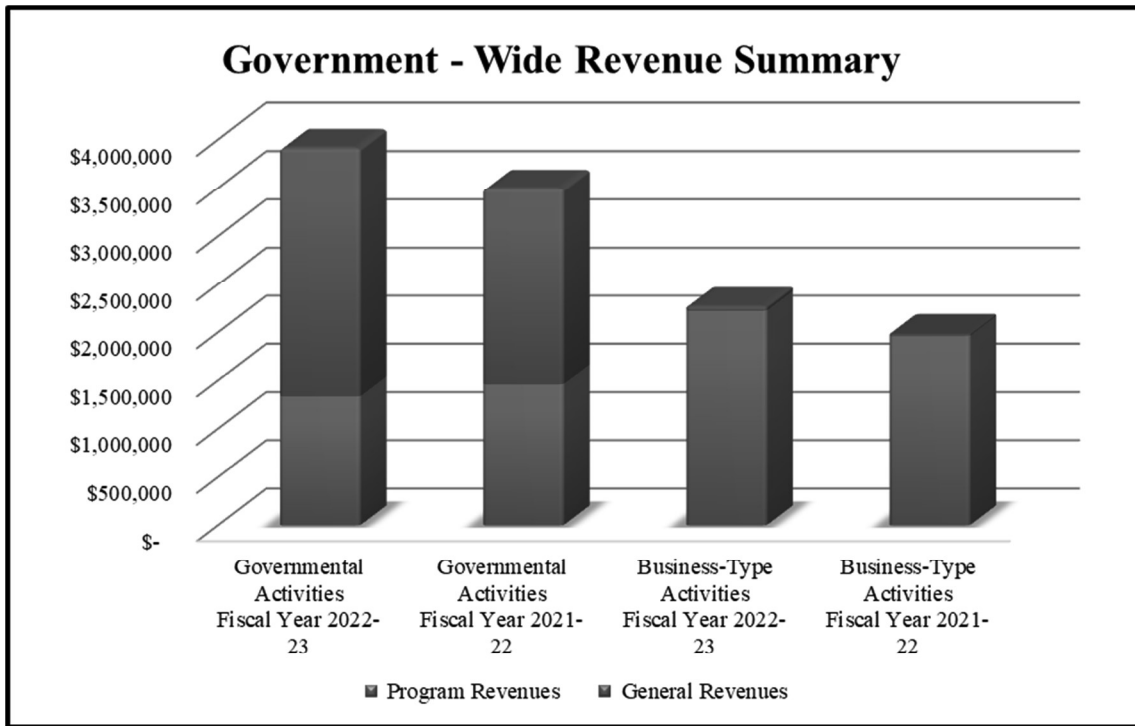
	Governmental Activities		Business-type Activities		Total	
	2022-23	2021-22	2022-23	2021-22	2022-23	2021-22
Revenues						
Program Revenues						
Charges for Services	\$ 1,138,567	\$ 1,210,595	\$ 2,589,717	\$ 1,965,692	\$ 3,728,284	\$ 3,176,287
Operating Grants and Contributions	200,767	253,472	-	-	200,767	253,472
Total Program Revenues	1,339,334	1,464,067	2,589,717	1,965,692	3,929,051	3,429,759
General Revenues						
Local Sources						
Property Taxes, Franchise Fees, & Public Service Taxes	2,038,850	1,989,244	-	-	2,038,850	1,989,244
Interest & Investment Earnings	270,687	11,404	74,440	12,606	345,127	24,010
Other Revenues	263,666	28,296	-	-	263,666	28,296
Total General Revenues	2,573,203	2,028,944	74,440	12,606	2,647,643	2,041,550
Total Revenues	3,912,537	3,493,011	2,664,157	1,978,298	6,576,694	5,471,309
Program Expenses						
General Government	1,170,450	1,444,904	-	-	1,170,450	1,444,904
Public Safety	903,421	867,896	-	-	903,421	867,896
Public Works	1,079,236	704,075	-	-	1,079,236	704,075
Culture and Recreation	37,999	54,492	-	-	37,999	54,492
Urban Renewal Projects	376,695	12,071	-	-	376,695	12,071
Interest on Long-Term Debt	14,845	16,267	-	-	14,845	16,267
Utility Services						
Water Utilities	-	-	575,917	799,668	575,917	799,668
Sewer Utilities	-	-	1,392,763	1,319,074	1,392,763	1,319,074
Total Program Expenses	3,582,646	3,099,705	1,968,680	2,118,742	5,551,326	5,218,447
Transfers	(40,677)	(375,000)	40,677	375,000	-	-
Change in Net Position	\$ 289,215	\$ 18,306	\$ 736,154	\$ 234,556	\$ 1,025,368	\$ 252,862

CITY OF COBURG

Management’s Discussion and Analysis (MD&A) For the Fiscal Year Ended June 30, 2023 Unaudited

The Statement of Activities shows the cost of program services and the charges for services, grants, and contributions offsetting those services. The following table shows, for governmental activity, the total cost of the four major functional activities of the City. The table also shows each function’s net cost (total cost minus charges for services generated by the activities and intergovernmental aid provided for specific programs). The net cost shows the financial burden placed on the City’s taxpayers by each function.

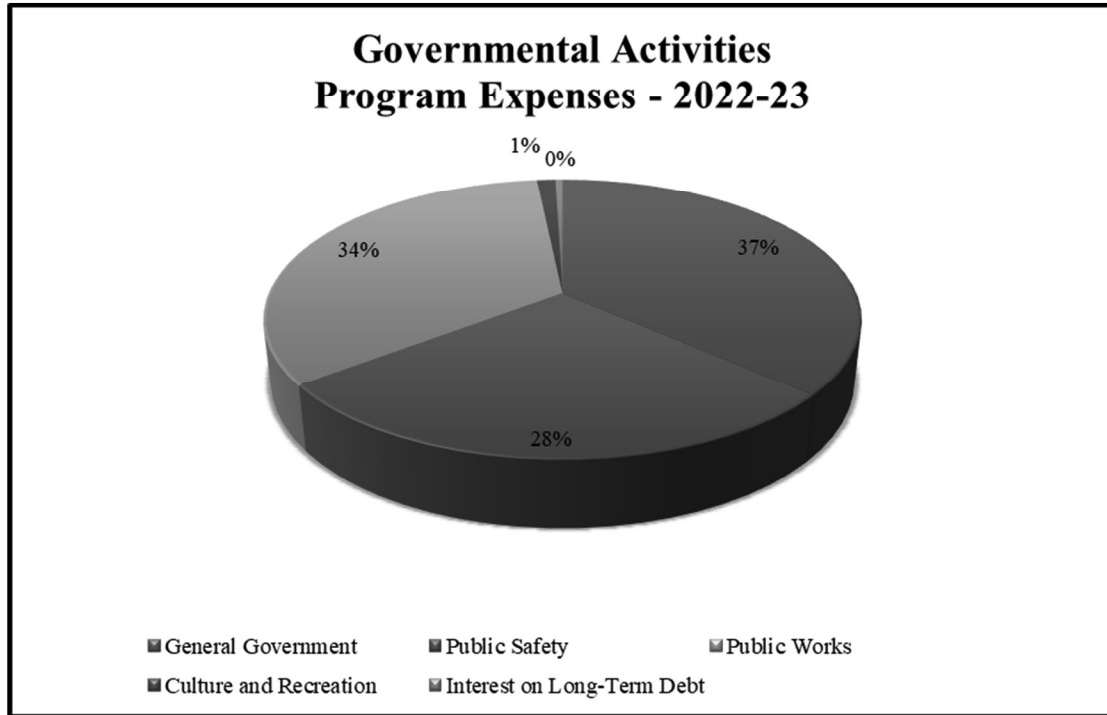
The following chart analyzes the revenue between governmental and business-type activities from the prior to the current year.



CITY OF COBURG

**Management’s Discussion and Analysis (MD&A)
For the Fiscal Year Ended June 30, 2023
Unaudited**

This Chart represents the cost of the City’s Program expenses by governmental activities.



The expenses for governmental activities slightly increased by \$482,941, with Public Works seeing the largest increase of \$375,161.

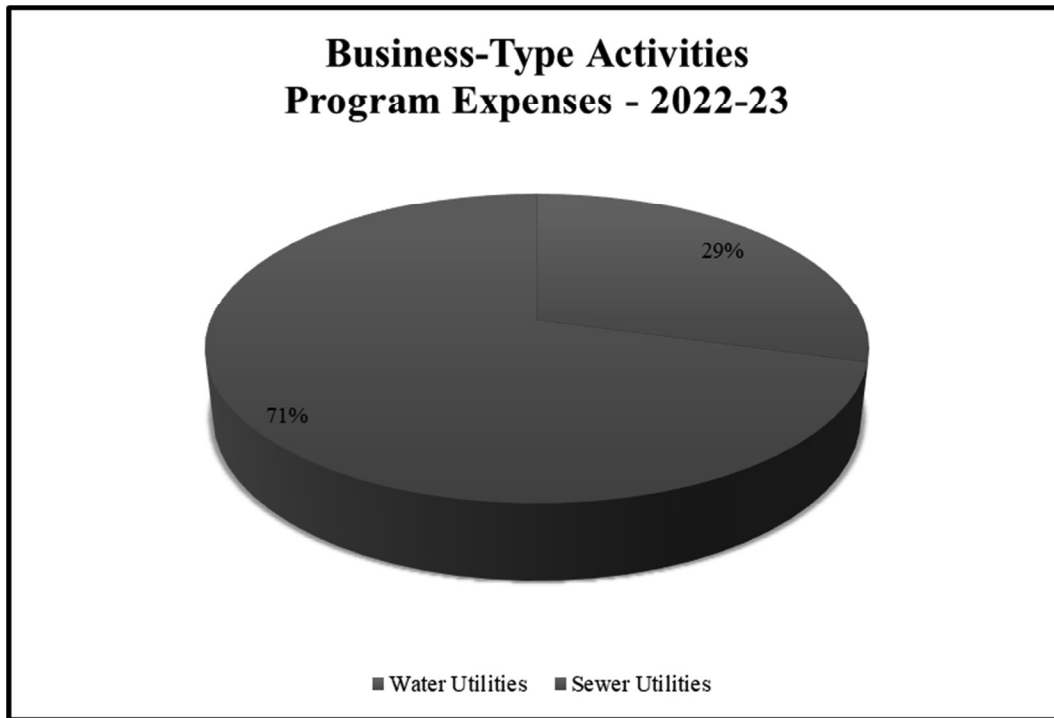
Governmental Activities

	Total Cost of Services		Net (Cost) Profit of Services	
	2022-23	2021-22	2022-23	2021-22
General Government	\$ 1,170,450	\$ 1,444,904	\$ (969,683)	\$ (1,250,479)
Public Safety	903,421	867,896	(903,421)	(726,213)
Public Works	1,079,236	704,075	(45,564)	320,219
Culture and Recreation	37,999	54,492	66,896	49,173
Urban Renewal Projects	376,695	12,071	(376,695)	(12,071)
Interest Expense	14,845	16,267	(14,845)	(16,267)
Total Program Expenses	\$ 3,582,646	\$ 3,099,705	\$ (2,243,312)	\$ (1,635,638)

CITY OF COBURG

**Management’s Discussion and Analysis (MD&A)
For the Fiscal Year Ended June 30, 2023
Unaudited**

This graph represents the cost of the City’s Program expenses by Business Type activities.



The business-type activities incurred a sum of \$1,968,680 in program expenses. Notably, water-related expenses experienced a decline of \$223,751, while sewer-related expenses witnessed an increase of \$73,689.

Business-Type Activities

	<u>Total Cost of Services</u>		<u>Net (Cost) Profit of Services</u>	
	<u>2022-23</u>	<u>2021-22</u>	<u>2022-23</u>	<u>2021-22</u>
Water Utilities	\$ 575,917	\$ 799,668	\$ 519,362	\$ 161,209
Sewer Utilities	<u>1,392,763</u>	<u>1,319,074</u>	<u>101,675</u>	<u>(314,259)</u>
Total Program Expenses	<u>\$ 1,968,680</u>	<u>\$ 2,118,742</u>	<u>\$ 621,037</u>	<u>\$ (153,050)</u>

CITY OF COBURG

**Management’s Discussion and Analysis (MD&A)
For the Fiscal Year Ended June 30, 2023
Unaudited**

FINANCIAL ANALYSIS OF THE CITY’S FUNDS

As noted earlier, the City uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. The City’s governmental funds focus on providing information on short-term inflows, outflows, and balances of spendable resources. Such information is useful in assessing the City’s financing requirements. An unrestricted fund balance may serve as a useful measure of the City’s net resources available for spending at the end of the fiscal year.

Governmental Funds

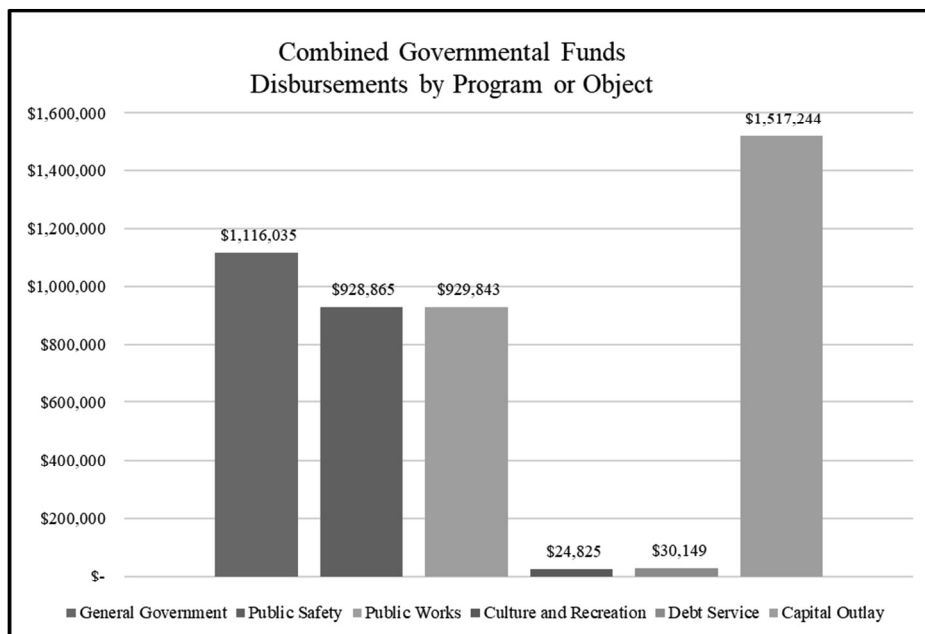
As the City completed the year, its governmental funds reported a combined balance of \$1,466,974. The fund balance constitutes restricted, committed, and unassigned amounts. Of the current fund balances, a total of \$1,529,839 is restricted funds, including \$829,120 for Systems Development and \$36,504 for Urban Renewal Projects. Of the current fund balance, a total of \$(1,679,499) is committed funds, including \$(1,682,712) for Public Works and \$3,213 for Community Development Projects. The remaining balance of \$1,616,634 is considered unassigned funds and can be spent at the City’s discretion.

The General Fund is the principal operating fund of the City. At the end of the current fiscal year, unassigned fund balance of the General Fund was \$255,685, committed fund balance was \$3,213 for community development projects and restricted fund balance was \$192,958 for Systems Development totaling \$451,856 as the ending total fund balance.

At the end of the current fiscal year, the restricted fund balance of the Street Fund was \$1,300,377 for systems development. The committed fund balance was \$(1,682,712) for Public Works. The total Fund balance was \$912,138.

At the end of the current fiscal year, the fund balance of the Coburg Urban Renewal Agency Fund was \$102,980, of which all is restricted to Urban Renewal Projects for \$36,504 and the remaining \$66,476 considered unassigned funds and can be spent at the City’s discretion.

The following is a comparison of current expenditures by program of government funds.



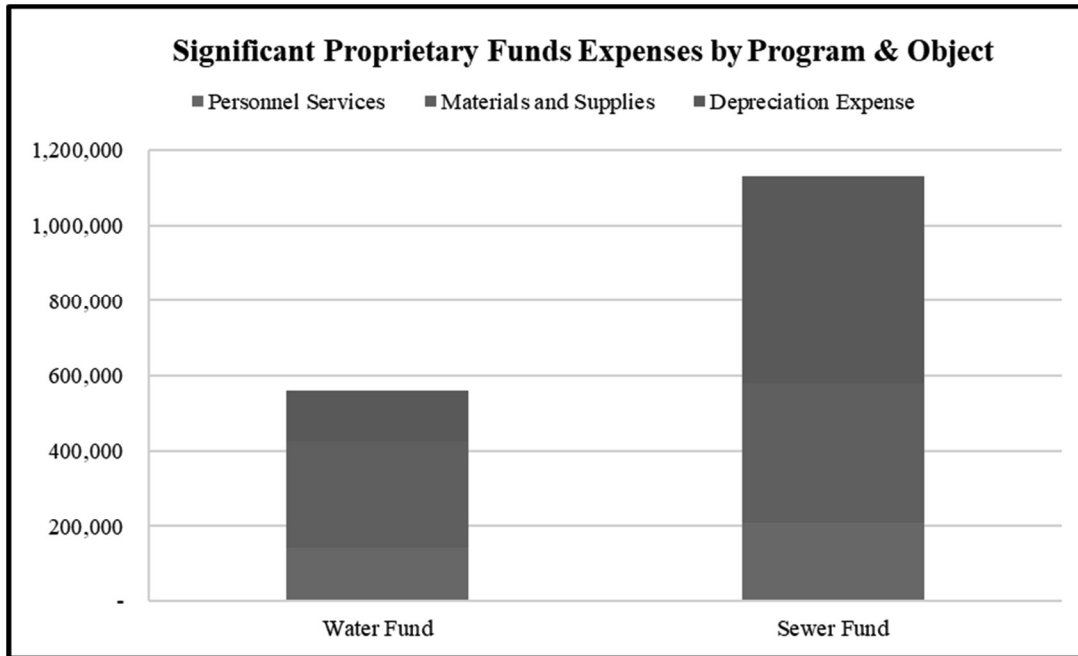
CITY OF COBURG

**Management’s Discussion and Analysis (MD&A)
For the Fiscal Year Ended June 30, 2023
Unaudited**

Proprietary Funds

The City’s enterprise funds reported a total net position of \$15,541,083, an increase of \$714,336. This is primarily attributed to an increase in capital assets. The enterprise funds also report \$1,933,256 in restricted net position, which includes debt service of \$672,161, \$1,259,085 for Systems Development, and \$2,010 for Net OPEB Asset. Capital Assets' net of related debt was \$12,342,385, which includes sewer and water infrastructure, buildings, and equipment.

The following is a comparison of current expenses by program of proprietary funds.



Personnel expenses are minimal in the enterprise funds as all personnel costs are absorbed in the general fund and reimbursed by the utility funds according to the hours charged to each department.

Budgetary Highlights

General Fund revenues were budgeted and anticipated to be collected in the amount of \$3,509,933 during the fiscal year. Actual revenues of \$2,755,963 were available, which was \$753,970 less than budgeted. This is primarily attributed to actual grant and donation revenues being \$541,220 lower than budgeted. The General Fund expenditures budget was under-spent by \$811,121. The ending fund balance of \$451,856 was \$208,980 less than budgeted.

CITY OF COBURG**Management's Discussion and Analysis (MD&A)****For the Fiscal Year Ended June 30, 2023****Unaudited****CAPITAL ASSETS AND DEBT ADMINISTRATION****Capital Assets**

As of June 30, 2023, the City had invested, before net reduction for accumulated depreciation, \$39,910,156 in capital assets, including buildings, land, vehicles, water and sewer utility systems, construction in progress, and other equipment. This amount represents a net increase of \$3,564,556 from the prior year due to the addition of capital assets in fiscal year 2023. There were no deletions.

Total depreciation expense for the year was \$933,324; of which \$250,350 is associated with governmental activities with the remainder of \$682,973 associated with the water and sewer funds. Additional information on the City's capital assets can be found in this report's Capital Asset Note in the Notes to the Basic Financial Statements section.

Long-Term Debt

By June 30, 2023, the City had total long-term debt outstanding of \$16,869,481, an increase of \$970,005. The principal paid on long-term debt was \$815,542, while interest paid was \$243,464. Issuance of new long-term debt of \$302,570. Additional information on the City's long-term debt can be found in the Long-Term Debt Note of the Notes to the Basic Financial Statements.

ECONOMIC FACTORS AND NEXT YEAR'S BUDGET AND RATES**Economic Factors**

In the 2022-23 fiscal year, the City of Coburg made significant progress in economic development. Several projects were completed to enhance economic vitality and community pride. These include the establishment of a non-profit, a downtown business directory, flower baskets, a new Main Street logo, and the revival of various community events. The City will continue to achieve its goals and projects while navigating any challenges.

Budget

The City adopted a budget of \$17,969,888 for the fiscal year ending on June 30, 2024. This budget represents an increase of \$866,051 over the previous year. Out of the total budget, \$15,141,411 has been allocated to different funds, including \$3,536,284 for the General Fund, \$2,524,462 for the Street Fund, \$6,900,055 for the Water Fund, and \$2,280,610 for the Sewer Fund. The remaining balance of \$2,828,477 are unappropriated and available to be used at the City's discretion.

Rate

Permanent Tax Rate for 2023-24: \$3.7506/\$1000.

CONTACTING THE CITY'S FINANCIAL MANAGEMENT

This financial report is designed to provide our citizens, taxpayers, investors, and creditors with a general overview of the City's finances and to demonstrate the City's accountability for the resources it receives. If you have any questions about this report or need additional information, contact the City of Coburg at (541) 682-7870. The office is located inside City Hall at 91136 N. Willamette Street, Coburg, Oregon 97408

BASIC FINANCIAL
STATEMENTS

Government-Wide
Financial Statements

CITY OF COBURG
STATEMENT OF NET POSITION
For the Fiscal Year Ended June 30, 2023

	Governmental Activities	Business-Type Activities	Total
<u>ASSETS:</u>			
Current Assets:			
Cash and Investments	\$ 1,661,397	\$ 2,671,363	\$ 4,332,761
Accounts Receivable	13,089	231,475	244,564
LID Liens Receivable	-	44,998	44,998
SDCs Receivable	29,997	115,739	145,736
Property Taxes Receivable	47,001	-	47,001
Total Current Assets	<u>1,751,484</u>	<u>3,063,575</u>	<u>4,815,060</u>
Restricted Assets:			
Sinking Funds for Debt Service	-	672,161	672,161
Net OPEB Asset (RHIA)	23,113	2,010	25,123
Total Restricted Assets	<u>23,113</u>	<u>674,171</u>	<u>697,284</u>
Capital Assets, Net of Accumulated Depreciation	<u>4,315,798</u>	<u>27,719,395</u>	<u>32,035,193</u>
Total Assets	<u>6,090,395</u>	<u>31,457,141</u>	<u>37,547,537</u>
<u>DEFERRED OUTFLOW OF RESOURCES:</u>			
Pension Related Deferrals	611,984	49,051	661,035
OPEB Related Deferrals - RHIA	1,073	90	1,163
OPEB Related Deferrals - CIS	8,994	782	9,776
Total Deferred Outflow of Resources	<u>622,051</u>	<u>49,923</u>	<u>671,974</u>
<u>LIABILITIES:</u>			
Current Liabilities:			
Due to Component Unit			
Accounts Payable	90,098	271,318	361,416
Payroll Payable	123,063	-	123,063
Accrued Compensated Absences	66,215	-	66,215
Interest Payable	2,262	52,205	54,467
Customer Deposits	-	2,759	2,759
Current Portion of Long-Term Liabilities:			
Notes Payable	92,060	545,201	637,261
Bonds Payable	15,000	170,000	185,000
Total Current Liabilities	<u>388,698</u>	<u>1,041,483</u>	<u>1,430,181</u>
Long-Term Liabilities:			
Noncurrent Portion of Long-Term Liabilities:			
Notes Payable	907,440	8,996,584	9,904,024
Bonds Payable, Net of Premium	477,971	5,665,225	6,143,196
Net OPEB Obligation - CIS	42,863	3,727	46,590
Net Pension Liability	1,048,062	91,136	1,139,198
Total Long-Term Liabilities	<u>2,476,336</u>	<u>14,756,672</u>	<u>17,233,008</u>
Total Liabilities	<u>2,865,034</u>	<u>15,798,155</u>	<u>18,663,189</u>
<u>DEFERRED INFLOW OF RESOURCES:</u>			
Receivables Currently not Collectable	-	133,368	133,368
Deferred Earnings on Pension Assets	366,585	31,877	398,462
OPEB Related Deferrals - RHIA	5,677	2,044	7,721
OPEB Related Deferrals - CIS	24,004	537	24,541
Total Deferred Inflow of Resources	<u>396,266</u>	<u>167,826</u>	<u>564,092</u>
<u>NET POSITION:</u>			
Net Investment in Capital Assets	2,823,327	12,342,385	15,165,712
Restricted for:			
Systems Development	829,120	1,259,085	2,088,206
Debt Service	-	672,161	672,161
Public Works	664,215	-	664,215
Urban Renewal Projects	36,504	-	36,504
Net OPEB Asset	23,113	2,010	25,123
Unrestricted	<u>(925,134)</u>	<u>1,265,442</u>	<u>340,308</u>
Total Net Position	<u>\$ 3,451,145</u>	<u>\$ 15,541,083</u>	<u>\$ 18,992,229</u>

CITY OF COBURG
STATEMENT OF ACTIVITIES
For the Fiscal Year Ended June 30, 2023

	Expenses	Program Revenues			Net (Expense) Revenue and Change in Net Position
		Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions	
<u>GOVERNMENTAL ACTIVITIES:</u>					
General Government	\$ 1,170,450	\$ -	\$ 200,767	\$ -	\$ (969,683)
Public Safety	903,421	-	-	-	(903,421)
Public Works	1,079,236	1,033,672	-	-	(45,564)
Culture and Recreation	37,999	104,895	-	-	66,896
Urban Renewal Projects	376,695	-	-	-	(376,695)
Interest Expense	14,845	-	-	-	(14,845)
Total Governmental Activities	3,582,646	1,138,567	200,767	-	(2,243,312)
<u>BUSINESS-TYPE ACTIVITIES:</u>					
Water Utilities	575,917	1,095,279	-	-	519,362
Sewer Utilities	1,392,763	1,494,438	-	-	101,675
Interest on Long-Term Debt					
Total Business-type Activities	1,968,680	2,589,717	-	-	621,037
Total Primary Government	\$ 5,551,326	\$3,728,284	\$ 200,767	\$ -	\$ (1,622,275)
			Governmental Activities	Business-type Activities	Total
<u>CHANGES IN NET POSITION:</u>					
Net (expense) revenue			\$ (2,243,312)	\$ 621,037	\$ (1,622,275)
General Revenues:					
Property Taxes, levied for general purposes			903,639	-	903,639
Property Taxes, levied for urban renewal programs			436,017	-	436,017
Intergovernmental Tax Turnovers			475,286	-	475,286
Franchise Taxes			223,908	-	223,908
Interest and Investment Earnings			270,687	74,440	345,127
Other Revenue			263,666	-	263,666
Subtotal - General Revenues			2,573,203	74,440	2,647,643
Interfund Transfers			(40,677)	40,677	-
Total general revenues, special items, and transfers			2,532,526	115,117	2,647,643
Change in Net Position			289,214	736,155	1,025,369
Net Position, July 1, 2022			3,161,932	14,804,929	17,966,861
Net Position, June 30, 2023			\$ 3,451,145	\$ 15,541,083	\$ 18,992,229

The accompanying notes to the basic financial statements are an integral part of this statement.

BASIC FINANCIAL
STATEMENTS

Governmental Fund
Financial Statements

CITY OF COBURG
BALANCE SHEET
GOVERNMENTAL FUNDS

For the Fiscal Year Ended June 30, 2023

	<u>Component Unit</u>			
	General Fund	Street Fund	Urban Renewal Agency Fund	Total Governmental Funds
<u>ASSETS:</u>				
Cash and Investments	\$ 638,525	\$ 921,290	\$ 101,582	\$ 1,661,397
Receivables:				
Accounts, net	715	12,375	-	13,090
System Development Charges	29,997	-	-	29,997
Property Tax	31,594	-	15,407	47,001
Total Assets	<u>\$ 700,831</u>	<u>\$ 933,665</u>	<u>\$ 116,989</u>	<u>\$ 1,751,485</u>
<u>LIABILITIES, DEFERRED INFLOWS OF RESOURCES AND FUND BALANCES:</u>				
LIABILITIES:				
Accounts Payable	67,385	22,713	\$ -	\$ 90,098
Payroll Payable	123,063	-	-	123,063
Total Liabilities	<u>190,448</u>	<u>22,713</u>	<u>-</u>	<u>213,161</u>
DEFERRED INFLOWS OF RESOURCES:				
Delinquent Property Tax Revenue Not Available	28,530	-	14,009	42,539
Uncollected SDC Revenue	29,997	(1,186)	-	28,811
Total Deferred Inflows of Resources	<u>58,527</u>	<u>(1,186)</u>	<u>14,009</u>	<u>71,350</u>
FUND BALANCES:				
Restricted for:				
Public Works	-	664,215	-	664,215
Systems Development	192,958	636,162	-	829,120
Urban Renewal Projects	-	-	36,504	36,504
Committed for:				
Public Works	-	(1,682,712)	-	(1,682,712)
Community Development Projects	3,213	-	-	3,213
Unassigned	255,685	1,294,473	66,476	1,616,634
Total Fund Balances	<u>451,856</u>	<u>912,138</u>	<u>102,980</u>	<u>1,466,974</u>
Total Liabilities, Deferred Inflows of Resources & Fund Balances	<u>\$ 700,831</u>	<u>\$ 933,665</u>	<u>\$ 116,989</u>	<u>\$ 1,751,485</u>

The accompanying notes to the basic financial statements are an integral part of this statement.

CITY OF COBURG
RECONCILIATION OF THE BALANCE SHEET -- GOVERNMENTAL FUNDS
TO THE STATEMENT OF NET POSITION
For the Fiscal Year Ended June 30, 2023

Total Fund Balances - Governmental Funds	\$ 1,466,974
 Amounts reported for governmental activities in the Statement of Net Position are different because:	
Capital assets used in governmental activities are not financial resources and therefore are not reported in the governmental funds.	
The cost of the assets is -	\$ 5,600,654
The accumulated depreciation is -	<u>(1,284,856)</u>
Net Value of Assets	4,315,798
Net pension assets reported in governmental activities are not financial resources and therefore are not reported in the governmental funds.	
	23,113
Certain receivables that will not be available to pay for current-period expenditures are deferred in the governmental funds:	
Property Taxes	42,539
Assessments	<u>28,812</u>
	71,351
Deferred inflows and outflows of pension and opeb contributions and earnings are not reported in the governmental funds	
Pension and OPEB Related Deferrals	225,784
Interest Payable is not recorded in the governmental funds:	
Accrued Compensated Absences are not recorded in the governmental funds:	(66,215)
Interest Payable is not recorded in the governmental funds:	(2,263)
Long-term liabilities, including notes payable and net pension liability, are not due and payable in the current period and therefore are not reported in the governmental funds.	
	<u>(2,583,396)</u>
 Net Position of Governmental Activities	 <u>\$ 3,451,145</u>

CITY OF COBURG
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES
GOVERNMENTAL FUNDS
For the Fiscal Year Ended June 30, 2023

	<u>Component Unit</u>			
	<u>General Fund</u>	<u>Street Fund</u>	<u>Urban Renewal Agency Fund</u>	<u>Total Governmental Funds</u>
<u>REVENUES:</u>				
Taxes and Assessments	\$ 905,168	\$ -	\$ 436,017	\$ 1,341,185
Intergovernmental	74,980	400,306	-	475,286
Franchise Taxes	223,908	-	-	223,908
Licenses & Permits	170,558	-	-	170,558
Charges for Service	104,895	-	-	104,895
Fines and Forfeitures	11,865	9,410	7,154	28,429
Investment Revenue	130,687	140,000	-	270,687
Grants and Donations	200,767	-	-	200,767
Interdepartmental Charges	878,804	-	-	878,804
Other Revenue	54,331	209,335	-	263,666
Total Revenues	<u>2,755,963</u>	<u>759,051</u>	<u>443,171</u>	<u>3,958,185</u>
<u>EXPENDITURES:</u>				
Current Operating:				
General Government	1,116,035	-	-	1,116,035
Public Safety	928,865	-	-	928,865
Public Works	563,245	366,598	-	929,843
Culture and Recreation	24,825	-	-	24,825
Urban Renewal Projects	-	-	376,695	376,695
Debt Service:				
Principal	15,000	-	-	15,000
Interest	15,149	-	-	15,149
Capital Outlay	79,857	1,437,387	-	1,517,244
Total Expenditures	<u>2,742,976</u>	<u>1,803,985</u>	<u>376,695</u>	<u>4,923,656</u>
Excess (Deficiency) of Revenues Over Expenditures	12,987	(1,044,934)	66,476	(965,471)
<u>OTHER FINANCING SOURCES (USES):</u>				
Proceeds from Promissory Note	-	999,500	-	999,500
Total Other Financing Sources (Uses)	<u>-</u>	<u>999,500</u>	<u>-</u>	<u>999,500</u>
Net Change in Fund Balances	12,987	(45,434)	66,476	34,029
Fund Balances - July 1, 2022	438,869	957,572	36,504	1,432,945
Fund Balances - June 30, 2023	<u>\$ 451,856</u>	<u>\$ 912,138</u>	<u>\$ 102,980</u>	<u>\$ 1,466,974</u>

The accompanying notes to the basic financial statements are an integral part of this statement.

CITY OF COBURG
RECONCILIATION OF THE STATEMENT
OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES
GOVERNMENTAL FUNDS TO THE STATEMENT OF ACTIVITIES

For the Fiscal Year Ended June 30, 2023

Net Changes in Fund Balances - Total Governmental Funds	\$	34,029
Amounts reported for governmental activities in the Statement of Activities are different because:		
Governmental funds report capital outlay as expenditures. However, in the Statement of Activities the cost of those assets are allocated over their estimated useful lives as depreciation expense.		
Expenditures for capitalized assets	\$ 1,583,545	
Less current year depreciation	<u>(250,350)</u>	1,333,195
Some revenues will not be collected for several months after the City's fiscal year end and are therefore not considered "available" revenues in the governmental funds. Instead these funds are reported as deferred revenue. However, some of these amounts are recorded as revenue in the Statement of Activities.		
The changes in amounts deferred are as follows:		
Property Taxes	(1,535)	
System Development Charges	<u>(44,119)</u>	(45,654)
Expense accruals in the governmental funds do not include accrued interest expense payable. The change in payables from the prior year to the current year is as follows -		
Changes to certain accruals are reflected in expenses in the Statement of Activities as follows:		
Employee benefits amounts		(9,046)
Interest Payable		68
Amortization of Bond Premium		236
Long term debt proceeds are included as revenue in governmental funds, but the proceeds increase long-term debt balances in the Statement of Net Position. This amount is adjusted for the proceeds received by the City at the time the promissory note was entered into.		
		(999,500)
Repayment of long-term debt principal amounts are expenditures in the governmental funds, but the repayment reduces long-term debt liabilities in the Statement of Net Position.		
Retirement of debt principal is as follows:		
Notes Payable		
General Obligations Bonds	<u>15,000</u>	15,000
Adjustment for pension costs not reported on the governmental fund financial statements on a modified accrual basis are included as adjustments to expenses on an accrued basis are as follows:		
		<u>(39,114)</u>
Change in Net Position of Governmental Activities	\$	<u>289,214</u>

BASIC FINANCIAL
STATEMENTS

Proprietary Fund
Financial Statements

CITY OF COBURG
STATEMENT OF NET POSITION
PROPRIETARY FUNDS
For the Fiscal Year Ended June 30, 2023

	<u>Enterprise Funds</u>		<u>Total Proprietary Funds</u>
	<u>Water Fund</u>	<u>Sewer Fund</u>	
<u>ASSETS:</u>			
Current Assets:			
Cash and Investments	\$ 1,239,040	\$ 1,432,323	\$ 2,671,363
Accounts Receivable, Net	147,242	84,233	231,475
LID Liens Receivable	-	44,998	44,998
SDCs Receivable	28,721	87,018	115,739
Total Current Assets	<u>1,415,003</u>	<u>1,648,572</u>	<u>3,063,575</u>
Restricted Assets:			
Sinking Funds for Debt Service	31,960	640,201	672,161
Net OPEB Asset (RHIA)	517	1,493	2,010
Total Restricted Assets	<u>32,477</u>	<u>641,694</u>	<u>674,171</u>
Capital Assets:			
Land	-	217,293	217,293
Depreciable Assets, Net of Depreciation	6,460,676	21,041,426	27,502,102
Total Capital Assets	<u>6,460,676</u>	<u>21,258,719</u>	<u>27,719,395</u>
Total Assets	<u>7,908,156</u>	<u>23,548,985</u>	<u>31,457,141</u>
<u>DEFERRED OUTFLOW OF RESOURCES:</u>			
Pension Related Deferrals	9,519	39,532	49,051
OPEB Related Deferrals - RHIA	21	69	90
OPEB Related Deferrals - CIS	201	581	782
Total Deferred Outflow of Resources	<u>9,741</u>	<u>40,182</u>	<u>49,923</u>
<u>LIABILITIES:</u>			
Current Liabilities:			
Accounts Payable	260,586	10,732	271,318
Interest Payable	1,085	51,120	52,205
Customer Deposits	2,759	-	2,759
Current Portion of Long-Term Liabilities:			
Notes Payable	-	545,201	545,201
Bonds Payable	75,000	95,000	170,000
Total Current Liabilities	<u>339,430</u>	<u>702,053</u>	<u>1,041,483</u>
Long-Term Liabilities:			
Noncurrent Portion of Long-Term Liabilities:			
Notes Payable	2,104,262	6,892,322	8,996,584
Bonds Payable, Net of Premium	160,222	5,505,003	5,665,225
Net OPEB Obligation - CIS	958	2,769	3,727
Net Pension Liability	23,435	67,701	91,136
Total Long-Term Liabilities	<u>2,288,877</u>	<u>12,467,795</u>	<u>14,756,672</u>
Total Liabilities	<u>2,628,307</u>	<u>13,169,848</u>	<u>15,798,155</u>
<u>DEFERRED INFLOW OF RESOURCES:</u>			
Receivables Currently not Collectable	30,216	103,152	133,368
Pension Related Deferrals	8,197	23,680	31,877
OPEB Related Deferrals - RHIA	127	1,917	2,044
OPEB Related Deferrals - CIS	537	-	537
Total Deferred Inflow of Resources	<u>39,077</u>	<u>128,749</u>	<u>167,826</u>
<u>NET POSITION:</u>			
Net Investment in Capital Assets	4,121,192	8,221,193	12,342,385
Restricted for Debt Service	31,960	640,201	672,161
Restricted for Systems Development	28,721	1,230,364	1,259,085
Restricted for Net OPEB Asset	517	1,493	2,010
Unrestricted	1,068,123	197,319	1,265,442
Total Net Position	<u>\$ 5,250,513</u>	<u>\$ 10,290,570</u>	<u>\$ 15,541,083</u>

The accompanying notes to the basic financial statements are an integral part of this statement.

CITY OF COBURG
**STATEMENT OF REVENUES, EXPENSES,
AND CHANGES IN FUND NET POSITION**
PROPRIETARY FUNDS
For the Fiscal Year Ended June 30, 2023

	<u>Enterprise Funds</u>		<u>Total Proprietary Funds</u>
	<u>Water Fund</u>	<u>Sewer Fund</u>	
<u>OPERATING REVENUES:</u>			
Charges for Services & Fees	\$ 1,001,629	\$ 1,119,438	\$ 2,121,067
Total Revenues	1,001,629	1,119,438	2,121,067
<u>OPERATING EXPENSES:</u>			
Personnel Services	146,211	211,407	357,618
Materials and Supplies	280,009	368,228	648,237
Depreciation Expense	133,521	549,453	682,974
Total Operating Expenses	559,741	1,129,088	1,688,829
Operating Income (Loss)	441,888	(9,650)	432,238
<u>NON-OPERATING REVENUES (EXPENSES):</u>			
Loan Fees	-	(39,890)	(39,890)
Other Revenue	93,650	375,000	468,650
Investment Revenue	38,294	36,146	74,440
Interest Expense	(16,176)	(223,785)	(239,961)
Total Non-Operating Revenues (Expenses)	115,768	147,471	263,239
Income Before Other Revenues, Expenses, and Transfers	557,656	137,821	695,477
<u>CAPITAL CONTRIBUTIONS AND TRANSFERS:</u>			
Transfers from Other Funds	-	56,308	56,308
Transfers to Other Funds	(15,631)	-	(15,631)
Total Capital Contributions and Transfers	(15,631)	56,308	40,677
Changes in Net Position	542,025	194,129	736,154
Net Position, July 1, 2022	4,708,488	10,096,441	14,804,929
Net Position, June 30, 2023	\$ 5,250,513	\$ 10,290,570	\$ 15,541,083

CITY OF COBURG
STATEMENT OF CASH FLOWS
PROPRIETARY FUNDS
For the Fiscal Year Ended June 30, 2023

	Enterprise Funds		Total
	Water Fund	Sewer Fund	Proprietary Funds
<u>CASH FLOWS FROM OPERATING ACTIVITIES:</u>			
Cash Received from User Charges	\$ 1,253,386	\$ 1,088,480	\$ 2,341,866
Cash Payments for Employee Services	(143,932)	(208,883)	(352,815)
Cash Payments to Suppliers & Service Providers	(58,898)	(367,050)	(425,948)
Net Cash Provided (Used) by Operating Activities	1,050,556	512,547	1,563,103
<u>CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES:</u>			
Change in Customer Deposits	399	-	399
Non-Operating Receipts	93,650	375,000	468,650
Transfer to Other Funds	(15,631)	-	(15,631)
Transfer from Other Funds	-	56,308	56,308
Net Cash Provided (Used) by Non-capital Financing Activities	78,418	431,308	509,726
<u>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES:</u>			
Proceeds from Long-Term Debt	810,234	-	810,234
Acquisition of Capital Assets	(1,881,186)	(99,834)	(1,981,020)
Loan Fees Paid	-	(39,890)	(39,890)
Principal Paid on Long Term Debt	(170,000)	(630,542)	(800,542)
Interest Paid on Long Term Debt	(17,150)	(240,352)	(257,502)
Net Cash Provided (Used) by Capital and Related Financing Activities	(1,258,102)	(1,010,618)	(2,268,720)
<u>CASH FLOWS FROM INVESTING ACTIVITIES:</u>			
Investment Income	38,294	36,146	74,440
Net Cash Provided (Used) by Investing Activities	38,294	36,146	74,440
Cash and Cash Equivalents at July 1, 2022	1,361,834	2,124,956	3,486,790
Cash and Cash Equivalents at June 30, 2023	\$ 1,271,000	\$ 2,094,339	\$ 3,365,339
<u>Reconciliation of Income (Loss) From Operations to Net Cash Provided (Used) by Operating Activities:</u>			
Income (Loss) from Operations	\$ 441,888	\$ (9,650)	\$ 432,238
Adjustments to Reconcile Income (Loss) from Operations to Net Cash Provided (Used) by Operating Activities:			
Depreciation	133,521	549,453	682,974
Change in Assets, Liabilities and Deferred Amounts:			
Decrease (Increase) in Operating Receivables	251,757	(30,958)	220,799
Increase (decrease) in Payables	221,111	1,178	222,289
Increase (decrease) in Pension and OPEB Liabilities and Assets	4,731	13,668	18,399
Increase (decrease) in Pension and OPEB Deferred Inflows	(9,359)	(22,501)	(31,860)
(Increase) decrease in Deferred Outflows	6,907	11,357	18,264
Net Cash Provided (Used) by Operating Activities	\$ 1,050,556	\$ 512,547	\$ 1,563,103

The accompanying notes to the basic financial statements are an integral part of this statement.

BASIC FINANCIAL
STATEMENTS

Fiduciary Fund

CITY OF COBURG
STATEMENT OF NET POSITION
FIDUCIARY FUND
For the Fiscal Year Ended June 30, 2023

	Custodial Fund
	Cash Evidence Held Fund
<u>ASSETS:</u>	
Current Assets	
Cash & Investments	\$ 100
Total Assets	\$ 100
<u>LIABILITIES:</u>	
Current Liabilities	
Refund Payables and Other	\$ 100
Total Liabilities	\$ 100

CITY OF COBURG
ADDITIONS, DEDUCTIONS & CHANGES IN
NET POSITION
FIDUCIARY FUND
For the fiscal year ended June 30, 2023

	Custodial Fund
	Cash Evidence Held Fund
<u>ADDITIONS</u>	
Custodial funds received	-
Total Additions	\$ -
<u>DEDUCTIONS</u>	
Custodial funds Dispersed	\$ -
Total Deductions	\$ -

The accompanying notes to the basic financial statements are an integral part of this statement.

BASIC FINANCIAL
STATEMENTS

Notes to the Basic
Financial Statements

CITY OF COBURG

NOTES TO THE BASIC FINANCIAL STATEMENTS

June 30, 2023

SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:

The City of Coburg, Oregon (City) is a municipal corporation incorporated under the laws of the State of Oregon. The City is governed by an elected Mayor and an elected council. Administration officials are appointed by the council and are responsible for the day-to-day operations of the City.

The financial statements of the City have been prepared in accordance with Generally Accepted Accounting Principles (GAAP). GAAP Statements include all relevant Governmental Accounting Standards Board (GASB) pronouncements.

The following is a summary of the more significant policies of the City:

Reporting Entity

In determining the financial reporting entity, the City of Coburg complies with Governmental Accounting Standards Board Statement 14, "The Financial Reporting Entity." The criteria for including organizations as component units within the City's reporting entity, include whether 1) the organization is legally separate (can sue and be sued in their own name); 2) the City holds the corporate powers of the organization; 3) the City appoints a voting majority of the organization's council; 4) the City is able to impose its will on the organization; 5) the organization has the potential to impose a financial benefit/burden on the City; and 6) there is fiscal dependency by the organization on the City. Based on the criteria, the City of Coburg has one component unit, the Urban Renewal Agency.

Blended Component Unit- The City has included the financial operations of its Urban Renewal Agency as a blended component unit in the basic financial statements. The Agency is a legally separate entity, which is governed by a council comprised of the members of the City Council as stipulated in the Agency's bylaws. The City Council has the ability to impose its will on the Agency as determined on the basis of budget adoption, taxing authority, and funding for the Agency. Complete financial statements for the Agency can be obtained from the Finance Department of the City.

Basis of Presentation

Government-wide Statements: The statement of net position and the statement of activities display information about the City as a whole. These statements include the financial activities of the overall City. Eliminations have been made to minimize the double counting of internal activities. Governmental activities, which normally are supported by taxes and intergovernmental revenues, are reported separately from business-type activities, which rely to a significant extent on fees and charges for support. Direct expenses are those that are specifically associated with a program of function and, therefore, are clearly identifiable to a particular function. Program revenues include (a) fees and charges paid by the recipients of goods or services offered by the programs and (b) grants and contributions that are restricted to meeting the operational or capital requirements of a particular program. Revenues that are not classified as program revenues, including all taxes, are presented as general revenues. The comparison of direct expenses with program revenues identifies the extent to which each governmental function is self-financing or draws from the general revenues of the City.

The statement of activities demonstrates the degree to which the direct expenses of a given program are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific program. Program revenues include 1) charges to customers or applicants who purchase, use, or directly benefit from goods, services, or privileges provided by a given program and 2) operating or capital grants and contributions that are restricted to meeting the operational or capital requirements of a particular program. Taxes and other items not properly included among program revenues are reported instead as general revenues.

Net position is reported as restricted when constraints placed on net asset use are either externally restricted, imposed by creditors (such as through grantors, contributors, or laws) or through constitutional provisions or enabling resolutions.

CITY OF COBURG

NOTES TO THE BASIC FINANCIAL STATEMENTS

June 30, 2023

SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.):

Basis of Presentation (Cont.)

Fund Financial Statements: The fund financial statements provide information about the city's funds including those of a fiduciary nature, if applicable. Separate statements for each fund category – governmental and proprietary – are presented. The emphasis of fund financial statements is on major governmental funds, each displayed in a separate column. All remaining governmental funds are aggregated and reported as other governmental funds.

Governmental Funds are those funds through which most governmental functions typically are financed. The measurement focus of governmental funds is on the sources, uses and balance of current financial resources. The City reports the following major governmental funds:

General Fund - The General Fund is the main operating fund of the City. All financial resources, except those required to be accounted for in another fund, are accounted for in the General Fund. All general tax revenues and other receipts that are not restricted by law or contractual agreement to some other funds are accounted for in this fund. General operating expenditures, fixed charges and capital improvement costs that are not paid through other funds are paid from the General Fund.

Street Fund - This fund accounts for activities related to the construction and maintenance of City streets, including major infrastructure construction and repairs. Revenues for this fund come from state highway taxes, grants, and system development charges.

Coburg Urban Renewal Agency Fund – This fund accounts for the General Fund revenues and expenditures of the Urban Renewal Agency. This fund is reported as a blended component unit of the City.

The City does not report any non-major funds within the governmental fund type.

Proprietary Funds are accounted for using the economic resources measurement focus and the accrual basis of accounting. The accounting objectives are determinations of net income, financial position, and cash flow. All assets and liabilities are included on the Statement of Net Position. The City has presented the following major proprietary funds:

Water Funds - The Water Fund is used to account for the provision of water services to the residents of the City. Activities of the fund include administration, operations and maintenance of the water system, water capital improvements and billing and collection activities.

Sewer Funds - The Sewer Fund is used to account for the provision of sewer services to the residents of the City. Activities of the fund include administration, operations and maintenance of the sewer system, sewer capital improvements, debt payments and billing and collection activities.

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.):****Basis of Presentation (Cont.)**

Proprietary funds distinguish operating revenues and expenses from non-operating items. Operating revenues and expenses generally result from providing services and producing and delivering goods in connection with a proprietary fund's principal ongoing operations. Operating expenses for the proprietary funds include the cost of personal and contractual services, supplies and depreciation on capital assets. All revenues and expenses not meeting this definition are reported as non-operating revenues and expenses.

Fiduciary Funds are used to account for assets held by the City in a trustee capacity or as an agent for individuals, private organization, other governmental units or other funds. Fiduciary funds are custodial in nature and do not involve measurement of the results of operations.

Evidence Fund –The Evidence Fund is a holding fund for cash that has been confiscated by the Police Department in the investigation of crimes. Upon judicial dispensation of the crime, the cash taken as evidence is returned to the citizen from whom it was confiscated.

Measurement Focus/Basis of Accounting

Government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded at the time liabilities are incurred, regardless of when the related cash flows take place. Non-exchange transactions, in which the city receives value without giving equal value in exchange, include property taxes, grants, entitlements and donations. On the accrual basis of accounting revenue from property taxes is recognized in the fiscal year for which the taxes are levied. Revenues from grants, entitlements, and donations are recognized in the fiscal year in which all eligibility requirements have been satisfied. Under terms of grant agreements, the city funds certain programs by a combination of specific cost-reimbursement grants and general revenues. Thus, when program expenses are incurred, there are both restricted and unrestricted net position available to finance the program. It is the city's policy to first apply cost-reimbursement grant resources to such programs and then general revenues.

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Under the modified accrual basis of accounting, revenues are recognized when susceptible to accrual (when they are measurable and available). "Measurable" means the amount of the transaction can be determined and "available" means collected within the current period or expected to be collected soon enough thereafter to be used to pay liabilities of the current period. The city considers property taxes as available if they are collected within 60 days after year-end. A one-year availability period is used for revenue recognition for all other governmental fund revenues. Expenditures are recorded when the related fund liability is incurred, except for unmatured interest on general long-term debt, which is recognized when the obligations are expected to be liquidated with expendable available financial resources. Property taxes, interest and special assessments are susceptible to accrual. Other receipts and taxes become measurable and available when the cash is received by the government and are recognized as revenue at that time. Entitlements and shared revenues are recorded at the time of receipt or earlier if the "susceptible to accrual" criteria are met. Expenditure-driven grants are recognized as revenue when the qualifying expenditures have been incurred and all other grant requirements have been met. Capital asset acquisitions are reported as expenditures in the governmental funds and proceeds from general long-term debt and acquisitions under capital leases are reported as other financing sources.

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.):****Measurement Focus/Basis of Accounting (Cont.)**

Proprietary funds distinguish operating revenues and expenses from non-operating items. Operating revenues and expenses generally result from providing services and producing and delivering goods in connection with a proprietary fund's principal ongoing operations. The principal operating revenues of the city's Sewer and Water Funds are charges to customers for sales and services. These funds also recognize fees intended to recover the cost of connecting new customers to the city's utility systems as operating revenue. Operating expenses for enterprise funds include the cost of sales and services, administrative expenses, and depreciation on capital assets. All revenues and expenses not meeting this definition are reported as non-operating revenues and expenses.

Budgeting

A budget is prepared for each city fund in accordance with the modified accrual basis of accounting and legal requirements set forth in the Oregon local budget law. The resolution authorizing appropriations for each fund sets the level by which expenditures cannot legally exceed appropriations. Total personnel services, materials and services, capital outlay, interfund transfers, contingencies, and debt service by fund are the levels of control. The detail budget document, however, is required to contain more specific, detailed information for the above-mentioned expenditure categories. Appropriations lapse on June 30. Unexpected additional resources may be added to the budget by a supplemental budget and appropriations resolution. A supplemental budget may require hearings before the public, publications in newspapers, and approval by the city council. Original and supplemental budgets may be modified by using appropriations transfers between the levels of control. Such transfers require approval by the city council. The city does not utilize encumbrance accounting for budgeted funds.

Cash and Investments

For purposes of the statement of cash flows, cash and cash equivalents include cash on hand, checking, savings and money market accounts and any short-term, highly liquid investments with initial maturity dates of three months or less.

The City has adopted an investment policy requiring compliance with Oregon statutes, which authorizes the City to invest in obligations of the United States, the agencies and instrumentalities of the United States and the State of Oregon, and numerous other investment instruments.

The City's investments may consist of time certificates of deposit, banker's acceptances, commercial paper, U.S. Government Agency securities, and the State of Oregon Treasurer's Local Government Investment Pool (LGIP). The City's investments are reported at fair value at year-end. Changes in the fair value of investments are recorded as investment earnings. The LGIP is stated at cost, which approximates fair value. Fair value of the LGIP is the same as the City's value in the pool shares.

The Oregon State Treasury administers the LGIP. It is an open-ended, non-load diversified portfolio offered to any agency, political subdivision, or public corporation of the State that by law is made the custodian of, or has control of, any fund. The LGIP is included in the Oregon Short Term Fund (OSTF) which was established by the State Treasurer.

In seeking to best serve local governments of Oregon, the Oregon legislature established the Oregon Short-Term Fund Board. The purpose of the Board is to advise the Oregon State Treasury in the management and investment options of the LGIP.

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.):****Accumulated Compensated Absences**

Accumulated vested vacation and compensatory pay is accrued as it is earned. For governmental funds, compensation not expected to be liquidated with the current resources are reported as liabilities in the government-wide statements and represent a reconciling item between the fund level and government-wide presentations. In business-type funds both the current and long-term liabilities are recorded. Sick pay, which does not vest, is recognized in applicable funds when leave is taken.

Receivables

Amounts due from individuals, organizations or other governmental units are recorded as receivables at year-end. These amounts include charges for services rendered, or for goods and material provided by the City. All receivables are expected to be collected. Accordingly, receivables are reported at the gross amount without an allowance for uncollectible accounts.

Receivables are also recognized for property taxes and intergovernmental grants. Property taxes receivable consist of uncollected taxes levied and payable at the end of the fiscal year. All taxes are considered collectible. Consequently, no allowance for uncollectible taxes has been established. In the governmental fund financial statements, property taxes not collected within sixty days of the end of the fiscal year are reported as a deferred inflow or resources. (See the note Restricted Assets and Liabilities in the Summary of Significant Accounting Policies).

Deferred Inflows/Outflows of Resources:

In addition to assets, the statement of financial position will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, deferred outflows of resources, represents a consumption of net position that applies to a future period(s) and so will not be recognized as an outflow of resources (expense/expenditure) until then. Currently, the City has only one item that qualifies for reporting in this category, deferred pension contributions.

In addition to liabilities, the statement of financial position will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, deferred inflows of resources, represents an acquisition of net position that applies to a future period(s) and so will not be recognized as an inflow of resources (revenue) until that time. The City has only one type of item that qualifies for reporting in this category, deferred earnings on pension assets. In the governmental funds balance sheet, a different category of deferred inflow of resources, delinquent property tax revenue not available, is reported. Property taxes levied and considered receivable at the end of the fiscal year, but not collected within sixty days of the end of the fiscal year are reported in this category. These amounts are recognized as an inflow of resources (revenue) in the period that the amounts become available.

Inventory

Inventories are valued at cost, which approximates market value, using the first-in/first-out (FIFO) method. The costs of governmental fund-type inventories are recorded as expenditures when purchased. The costs of proprietary fund type inventories are also recorded as expenditures when purchased.

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.):****Restricted Assets and Liabilities**

Certain resources are set aside and restricted for future bond payments and the related liability; these resources are segregated in the statement of net position and are classified as restricted assets on the Statement of Net Position because their use is limited.

Long-Term Debt

All bonds and capital leases to be paid from governmental and business-type resources are reported as liabilities in the government-wide financial statements. Amounts of the long-term debt due within the following fiscal year are included in the current liabilities section of the Statement of Net Position.

Long-term debt for governmental funds is not reported as a liability in the fund financial statements. The debt proceeds are reported as other financing sources and payment of principal and interest reported as expenditures. The accounting for proprietary funds is the same in the fund financial statements as it is in the government-wide statements.

Capital Assets

Capital assets, which include property, plant, and equipment, are reported in the applicable governmental or business-type activities columns in the government-wide financial statements and in the fund financial statements for proprietary funds. Purchased or constructed capital assets are reported at cost or estimated cost when original cost is not available. Donated capital assets are valued at their estimated fair market value on the date received. Maintenance and repairs of capital assets that do not significantly extend the useful life of an asset are not capitalized, but rather are charged to expenditures in the funds.

Assets capitalized have an original cost of \$5,000 or more and over one year of useful life. Depreciation has been calculated on each class of depreciable property using the straight-line method.

The estimated useful lives are as follows:

Buildings and Improvements	10-50 years
Machinery and Equipment	3-20 years
Vehicles	5-10 years
Water and Sewer Systems	20-50 years
Infrastructure	25-35 years

Use of Estimates

The preparation of financial statements, in conformity with accounting principles generally accepted in the United States of America, requires management to make estimates and assumptions that affect the reported amount of assets and liabilities as well as disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenditures during the reporting period. Actual results could differ from those estimates.

CITY OF COBURG

NOTES TO THE BASIC FINANCIAL STATEMENTS

June 30, 2023

SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.):

Equity Classifications:

Government-wide Statements and Proprietary Fund Financial Statements

Equity is classified as net position, which represents the difference between assets and liabilities, and deferred accounts. Net position is displayed in three components:

- a. Net investment in capital assets - Consists of capital assets including restricted capital assets, net of accumulated depreciation and reduced by the outstanding balances of any bonds, mortgages, notes, or other borrowing that are attributable to the acquisition, construction, or improvement of those assets.
- b. Restricted net position - Consists of net position with constraints placed on the use either by (1) external groups such as creditors, grantor, contributors, or laws or regulations of other governments; or (2) law through constitutional provisions or enabling legislation.
- c. Unrestricted net position - All other net position that do not meet the definition of “restricted” or “invested in capital assets, net of related debt.”

The City’s policy is to first apply restricted resources when an expense is incurred for purposes for which both restricted and unrestricted net position is available.

Governmental Fund Financial Statements

The governmental fund financial statements present fund balances based on classifications that comprise a hierarchy that is based primarily on the extent to which the City is bound to honor constraints on the specific purposes for which amounts in the respective governmental funds can be spent. The classifications used in the governmental fund financial statements are as follows:

- **Nonspendable:** This classification includes amounts that cannot be spent either because it is not in spendable form or because of legal or contractual constraints. The City did not have any nonspendable resources as of the fiscal year end.
- **Restricted:** This classification includes fund balance amounts that are constrained for specific purposes which are externally imposed by creditors, grantors, contributors, or laws or regulations of other governments, or imposed by law through constitutional provisions or enabling legislation. The City has restricted funds for systems development, public works projects, urban renewal projects, Net OPEB assets, and debt service.
- **Committed:** This classification includes fund balance amounts that are constrained for specific purpose that are internally imposed by the government through resolution of the highest level of decision-making authority, the City Council, and does not lapse at year-end. The City has committed resources as of the end of the fiscal year.
- **Assigned:** This classification includes fund balance amounts that are intended to be used for specific purposes that are neither restricted nor committed. This intent can be expressed by the City Council or through the City Council delegating this responsibility to selected staff members or through the budgetary process. This classification also includes the remaining positive fund balance for all governmental funds except for the General Fund.
- **Unassigned:** This classification includes positive fund balance within the General Fund which has not been classified within the above-mentioned categories, and negative fund balances of other governmental funds.

The City’s policy is to use restricted fund balances first, followed by committed resources, and then assigned resources, as appropriate opportunities arise, but reserves the right to selectively spend unassigned resources first to defer the use of the constrained fund balances.

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Cont.):****Property Taxes**

The assessment date for the tax year is July 1. Personal and real property taxes are a lien on July 1. Total personal property tax becomes due and is delinquent when any installment is not paid by its due date. Real property tax is due and payable on November 15. However, a taxpayer may pay real property taxes in three equal installments, due on the 15th day of November, February, and May. Real property taxes become delinquent if not paid by May 15.

Inter-Fund Transactions

Internal service charges are reported as interdepartmental charges in the general fund and as part of operational expenditures in the funds charged for those services. Transactions that constitute reimbursements to a fund for expenditures initially made from it that are properly applicable to another fund are recorded as expenditures in the reimbursing fund and as reductions of expenditures in the fund that is reimbursed. All other inter-fund transactions, except quasi-external transactions and reimbursements, are reported as transfers in the fund financial statements. Nonrecurring or non-routine permanent transfers of equity are reported as residual equity transfers. All other inter-fund transfers are reported as operating transfers. For the purposes of the Statement of Activities, all interfund transfers between individual governmental funds have been eliminated.

Pensions

For purposes of measuring the net pension liability, deferred outflows of resources and deferred inflows of resources related to pensions, and pension expense, information about the fiduciary net position of the Oregon Public Employees Retirement Fund (OPERF) and the Oregon Public Service Retirement Plan (OPSRP) and additions to/deductions from OPERF's and OPSRP's fiduciary net position have been determined on the same basis as PERS reports them. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

CASH AND INVESTMENTS:

For a discussion of deposit and investment policies and other related information, see the Cash and Investments note in the Summary of Significant Accounting Policies.

The City follows the practice of aggregating the cash assets of various funds to maximize cash management efficiency and returns. State statutes impose various restrictions on deposits and investments. These restrictions are summarized in the Cash and Investments note in the Summary of Significant Accounting Policies.

Investments, including amounts held in pool cash and investments, are stated at fair value. In accordance with Governmental Accounting Standards Board (GASB) Statement No. 31, Accounting and Financial Reporting for Certain Investments and External Investment Pools, investments with a remaining maturity of more than one year at the time of purchase are stated at fair value. If available, fair value is determined at the quoted market prices; otherwise, the fair value is estimated based on the amount at which the investment could be exchanged in a current transaction between willing parties, other than a forced liquidation sale. State of Oregon Local Government Investment Pool (LGIP) investments are stated at fair value.

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****CASH AND INVESTMENTS (Cont.):**

Deposits - All cash is deposited in compliance with Oregon statutes. Banking regulations and Oregon law establish the insurance and collateral requirements for deposits. FDIC insurance of \$250,000 applies to the deposits in each depository. ORS 295 governs the collateralization of Oregon public funds and provides the statutory requirements for the Oregon Public Funds Collateralization Program (PFCP). Where balances continually exceed \$250,000, ORS 295 requires the depositor to verify that deposit accounts are only maintained at financial institutions on the list of qualified depositories on the state treasurer's website.

Custodial Credit Risk for Deposits - Custodial credit risk for deposits exists when, in the event of a depository failure, the City's deposits may not be returned to it. The City does not have a deposit policy for custodial credit risk.

As of June 30, 2023, the City's reported deposits were \$2,265,007; the bank balance was \$2,085,767, and \$438 in petty cash. Of the bank balance, the entire amount was insured by the FDIC or covered by the collateral held in a multiple financial institutions collateral pool administered by the Oregon State Treasurer.

Investments - Oregon statutes authorize the City to invest in obligations of the U.S. Treasury and U.S. agencies, banker's acceptances, repurchase agreements, commercial paper rated A-1 by Standard & Poor's Corporation or P-1 by Moody's Commercial Paper Record, and the Local Governmental Investment Pool. The City has no credit risk or investment policy that would further limit its investment choices.

Credit Risk - Credit risk exists when there is a possibility the issuer or other counterparty to an investment may be unable to fulfill its obligations. As of June 30, 2023, the City's investment in the Oregon State Treasurer's Local Government Investment Pool (LGIP) was unrated.

As of June 30, 2023, the City's investments in financial institutions are as follows:

<u>Type of Investment</u>	<u>Fair Value</u>	<u>Credit Rating</u>
Oregon State Treasurer's Local Government Investment Pool (LGIP)	<u>\$ 2,915,055</u>	N/A
Total Investments	<u><u>\$ 2,915,055</u></u>	

Investments in the LGIP and federal agency notes do not require disclosure of credit rating quality.

Concentration of Credit Risk - An increased risk of loss occurs as more investments are acquired from one issuer. This results in a concentration of credit risk. The City places no limit on the amount that may be invested in any one issuer. More than 5 percent of the City's investments are in the Oregon State Treasurer's Local Government Investment Pool (LGIP). This investment is 100% of the City's total investment.

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****CAPITAL ASSETS:**

The following is a summary of capital assets for governmental activity for the fiscal year ended June 30, 2023:

**Depreciable Assets Schedule
For the Fiscal Year Ended June 30, 2023**

<u>Governmental Activities</u>	Beginning Balances	Additions	Deletions	Ending Balances
Assets Not Being Depreciated:				
Land	\$ 317,231	\$ -	\$ -	\$ 317,231
Construction in Progress	191,023	26,508	-	217,531
Total of Capital Assets Not Being Depreciated	508,254	26,508	-	534,762
Assets Being Depreciated:				
Building and Building Improvement	888,150	-	-	888,150
Machinery and Equipment	601,923	253,678	-	855,601
Infrastructure	2,018,788	1,303,353	-	3,322,141
Total Depreciable Assets	3,508,861	1,557,031	-	5,065,892
Less: Accumulated Depreciation				
Building and Building Improvement	151,167	27,548	-	178,715
Machinery and Equipment	413,574	51,548	-	465,122
Infrastructure	469,765	171,254	-	641,019
Total Accumulated Depreciation	1,034,506	250,350	-	1,284,856
Net Value of Capital Assets Being Depreciated	2,474,355	1,306,681	-	3,781,036
Total Governmental Activities				
-- Net Value of Capital Assets	<u>\$ 2,982,609</u>	<u>\$ 1,333,189</u>	<u>\$ -</u>	<u>\$ 4,315,798</u>

Depreciation expense was charged to the functions of governmental activities as follows:

General Government	\$ 32,110
Public Safety	14,472
Public Works	169,596
Culture and Recreation	34,173
Total Depreciation Expense	<u>\$ 250,350</u>

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****CAPITAL ASSETS (Cont.):**

The following is a summary of capital assets for business-type activity for the fiscal year ended June 30, 2023:

**Depreciable Assets Schedule
For the Fiscal Year Ended June 30, 2023**

<u>Business-Type Activities</u>	Beginning Balances	Additions	Deletions	Ending Balances
Assets Not Being Depreciated:				
Land	\$ 217,293	\$ -	\$ -	217,293
Construction in Progress	1,971,891	1,981,017	-	3,952,908
Total	2,189,184	1,981,017	-	4,170,201
Assets Being Depreciated:				
Utility Systems	27,089,446	-	-	27,089,446
Building and Building Improvement	2,482,914	-	-	2,482,914
Machinery and Equipment	566,941	-	-	566,941
Total Depreciable Assets	30,139,301	-	-	30,139,301
Less: Accumulated Depreciation				
Utility Systems	5,345,759	592,767	-	5,938,526
Building and Building Improvement	347,608	49,658	-	397,266
Machinery and Equipment	213,766	40,548	-	254,314
Total Accumulated Depreciation	5,907,133	682,973	-	6,590,106
Net Value of Capital Assets Being Depreciated	24,232,168	(682,973)	-	23,549,195
Total Business-Type Activities				
-- Net Value of Capital Assets	<u>\$ 26,421,352</u>	<u>\$ 1,298,043</u>	<u>\$ -</u>	<u>\$ 27,719,396</u>
Total Net Value of Capital Assets of Primary Government				
	<u>\$ 29,403,961</u>	<u>\$ 2,631,233</u>	<u>\$ -</u>	<u>\$ 32,035,194</u>
Depreciation expense was charged to the functions of business-type activities as follows:				
Water		\$ 133,521		
Sewer		549,452		
Total Depreciation Expense		<u>\$ 682,973</u>		

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****LONG-TERM DEBT:**

Long-term debt information, presented separately with respect to governmental and business-type activities, is as follows.

Governmental Activities:

Full Faith & Credit Refunding Obligation Bonds, Series 2020, held by US Bank for refinancing and consolidation of debt. The bonds are \$6,565,000 and carry an interest rate between 3.0 and 4.0 %. The bonds are dated November 19, 2020. Liability and repayment of the debt are allocated between governmental activities, water activities, and sewer activities. The original balance of \$520,000 is the governmental activities portion. This portion will be fully retired in 2045. This bond is reported on the schedule as three separate amounts because it is reported by three different activities: governmental, water, and sewer.

On August 23, 2022, the City entered into a promissory note payable agreement with the Oregon Department of Transportation for financing street repair and maintenance projects. The promissory note amount is \$999,500 and carries an interest rate of 2.52 %. The first payment of \$114,400 is due September 1, 2023. Annual payments of \$114,400 are due every September. The final payment is due September 1, 2032.

Business-Type Activities:

Full Faith & Credit Refunding Obligation Bonds, Series 2020, held by US Bank for refinancing and consolidation of debt. The bonds are \$6,565,000 and carry an interest rate between 3.0 and 4.0 %. The bonds are dated November 19, 2020. Liability and repayment of the debt are allocated between governmental activities, water activities, and sewer activities. The original balance of \$5,135,000 is the sewer activities portion. This portion will be fully retired in 2055. This bond is reported on the schedule as three separate amounts because it is reported by three different activities: governmental, water, and sewer.

Full Faith & Credit Refunding Obligation Bonds, Series 2020, held by US Bank for refinancing and consolidation of debt. The bonds are \$6,565,000 and carry an interest rate between 3.0 and 4.0 %. The bonds are dated November 19, 2020. Liability and repayment of the debt are allocated between governmental activities, water activities, and sewer activities. The original balance of \$555,000 is the water activities portion. This portion will be fully retired in 2026. This bond is reported on the schedule as three separate amounts because it is reported by three different activities: governmental, water, and sewer.

Note payable to Department of Environmental Quality to refinance outstanding debt with DEQ. Note is dated December 1, 2020, for a total amount of \$8,805,123 and carries an interest rate of .86%. Principal and interest payments are due the first day of August and February until paid off with payment of February 1, 2036.

IFA Loan with Oregon Business Development Department loan #S19007 Safe Drinking Water Revolving Loan Fund for Water System Improvements. Original balance \$6,530,000 with forgivable amount of \$780,000. Interest rate 1.00%. Dated December 27, 2018. As of June 30, 2023, the loan is in drawdown and therefore not included in the future debt service requirements tables below.

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****LONG-TERM DEBT (Cont.):**

The following tables present the current year changes in those debt obligations and the current portions due for each debt.

CITY OF COBURG**SCHEDULE OF LONG-TERM DEBT TRANSACTIONS****For the Fiscal Year Ended June 30, 2023**

Governmental Long-Term Debt	Outstanding Balance July 1, 2022	New Issues	Principal Paid	Interest Paid	Outstanding Balance June 30, 2023	Due Within One Year
Bonds Payable:						
US Bank Global Corp. Trust Services - Govnmtl. Portion	\$ 505,000	\$ -	\$ 15,000	\$ 15,149	\$ 490,000	\$ 15,000
Total Bonds Payable	<u>505,000</u>	<u>-</u>	<u>15,000</u>	<u>15,149</u>	<u>490,000</u>	<u>15,000</u>
Notes from Direct Borrowing:						
Oregon Department of Transportation	\$ -	\$ 999,500	\$ -	\$ -	\$ 999,500	\$ 92,060
Total Notes Payable	<u>-</u>	<u>999,500</u>	<u>-</u>	<u>-</u>	<u>999,500</u>	<u>92,060</u>
	Unamortized Beginning	New Premiums		Current Amortization	Unamortized Ending	
Bond Premium	3,207	-		(236)	2,971	
Total Governmental Long-Term Debt, Net	<u>\$ 508,207</u>	<u>\$ 999,500</u>	<u>\$ 15,000</u>	<u>\$ 14,913</u>	<u>\$ 1,492,471</u>	<u>\$ 107,060</u>
Business-Type Long-Term Debt	Outstanding Balance July 1, 2022	New Issues	Principal Paid	Interest Paid	Outstanding Balance June 30, 2023	Due Within One Year
Bonds Payable:						
US Bank Global Corp. Trust Services - Sewer Portion	\$ 5,050,000	\$ -	90,000	\$ 172,900	\$ 4,960,000	\$ 95,000
US Bank Global Corp. Trust Services - Water Portion	405,000	-	170,000	12,150	235,000	75,000
Total Bonds Payable	<u>5,455,000</u>	<u>-</u>	<u>260,000</u>	<u>185,050</u>	<u>5,195,000</u>	<u>170,000</u>
Notes from Direct Borrowing :						
IFA Business Oregon #S19007 - In Drawdown	1,294,028	810,234	-	-	2,104,262	-
DEQ #R23045 Refinance Note	7,978,065	-	540,542	67,452	7,437,523	545,201
Total Notes from Direct Borrowing	<u>9,272,093</u>	<u>810,234</u>	<u>540,542</u>	<u>67,452</u>	<u>9,541,785</u>	<u>545,201</u>
	Unamortized Beginning	New Premiums		Current Amortization	Unamortized Ending	
Bond Premium	664,176	-		(23,951)	640,225	
Total Business-Type Long-Term Debt, Net	<u>\$ 15,391,269</u>	<u>\$ 810,234</u>	<u>\$ 800,542</u>	<u>\$ 228,551</u>	<u>\$ 15,377,010</u>	<u>\$ 715,201</u>

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****LONG-TERM DEBT (Cont.):**

The debt service requirements on the above debt are as follows:

Bonds Payable:

Due Fiscal Year Ending June 30,	Principal	Interest	Total
2024	\$ 185,000	\$ 191,950	\$ 376,950
2025	190,000	186,400	376,400
2026	195,000	180,700	375,700
2027	115,000	174,850	289,850
2028	125,000	171,400	296,400
2029 - 2033	670,000	798,800	1,468,800
2034 - 2038	770,000	693,050	1,463,050
2039 - 2043	895,000	569,750	1,464,750
2044 - 2048	955,000	424,200	1,379,200
2049 - 2053	1,085,000	233,600	1,318,600
2054 - 2058	500,000	30,200	530,200
Total	<u>\$ 5,685,000</u>	<u>\$ 3,654,900</u>	<u>\$ 9,339,900</u>

Notes from Direct Borrowing:

Due Fiscal Year Ending June 30,	Principal	Interest	Total
2024	\$ 637,261	\$ 85,133	\$ 722,394
2025	642,423	79,971	722,394
2026	648,504	73,890	722,394
2027	655,649	66,745	722,394
2028	662,895	59,499	722,394
2029 - 2033	3,421,160	185,142	3,606,301
2034 - 2038	1,769,131	26,416	1,795,547
Total	<u>\$ 8,437,023</u>	<u>\$ 576,795</u>	<u>\$ 9,013,818</u>

*IFA OBDD Loan #S19007 in drawdown is not included in the above debt service requirements.

The City has no unused lines of credit.

The City has no assets that are specifically pledged as collateral for any of the debt.

For further detail on debt service, see the 'Schedule of Long-Term Debt Transactions' in this report's Other Supplementary Data section.

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****PENSION PLAN:**

The City of Coburg offers various retirement plans to qualified employees as described below.

Name of Pension Plan

The City of Coburg participates with other state agencies in the Oregon Public Employees Retirement System (OPERS) which is a cost-sharing multiple-employer defined benefit pension plan.

Description of Benefit Terms**Plan Benefits**

OPERS is administered in accordance with Oregon Revised Statutes (ORS) Chapter 238, Chapter 238A, and Internal Revenue Code Section 401(a). The Oregon Legislature has delegated authority to the Public Employees Retirement Board (PERS Board) to administer and manage the System.

1. Tier One/Tier Two Retirement Benefit (Chapter 238). OPERS is a defined benefit pension plan that provides retirement and disability benefits, annual cost-of-living adjustments, and death benefits to members and their beneficiaries. Benefits are established by state statute. This defined benefit pension plan portion of OPERS is closed to new members hired on or after August 29, 2003.

Pension Benefits

The OPERS retirement allowance is payable monthly for life. Members may select from 13 retirement benefit options. These options include survivorship benefits and lump-sum refunds. The basic benefit is based on years of service and final average salary. A percentage (2.0 percent for police and fire employees, 1.67 percent for general service employees) is multiplied by the number of years of service and the final average salary. Benefits may also be calculated under either a formula plus annuity (for members who were contributing before August 21, 1981) or a money match computation if a greater benefit results. Police and Fire members may purchase increased benefits that are payable between the date of retirement and age 65.

A member is considered vested and will be eligible at minimum retirement age for a service retirement allowance if he or she has had a contribution in each of five calendar years, or has reached at least 50 years of age before ceasing employment with a participating employer (age 45 for police and fire members). General service employees may retire after reaching age 55. Police and fire members are eligible after reaching age 50. Tier One general service employee benefits are reduced if retirement occurs prior to age 58 with fewer than 30 years of service. Police and fire member benefits are reduced if retirement occurs prior to age 55 with fewer than 25 years of service. Tier Two members are eligible for full benefits at age 60. The ORS Chapter 238 Defined Benefit Pension Plan is closed to new members hired on or after August 29, 2003.

During the 2019 Legislative session, Senate Bill 1049 was approved and signed into law by the governor. Under Senate Bill 1049, several components of the bill have significantly impacted the System, and the bill continues to be implemented.

1. Employer Programs Project (effective July 1, 2019): established the Employer Incentive Fund (EIF) Program, which allows eligible employers to receive matching funds if they apply and make a qualifying deposit into a side account.
2. Salary Limit Project: A new limitation on subject final average salary used for PERS benefit calculations and contributions is used to determine member IAP contributions, employer contributions to fund the pension program, and the Final Average Salary (FAS) used in calculating retirement benefits under formula methods was added, (\$210,582 as of January 1, 2022). This amount is indexed annually to the Consumer Price Index (CPI)

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****PENSION PLAN (Cont.):**

3. Work After Retirement Project (effective January 1, 2020): The 1,039-hour Work After Retirement limit for all PERS retirees is removed for calendar years 2020 through 2024. If a member retires on or after normal retirement age, starting in 2020, they can work for a PERS-covered employer and continue receiving their pension benefit (without accruing any new benefits) with no hour limitations. If a member retires earlier than normal retirement age, starting in 2020, they can work for a PERS-covered employer and continue receiving their pension benefit (without accruing any new benefits) with no hour limitations if the date of their employment is more than six months after their retirement date.
4. Member Redirect Project (effective July 1, 2020): For all currently employed Tier One/Tier Two and OPSRP members earning \$3,333/month in House Bill 2906 as of June 2021), a portion of their 6 percent monthly IAP contributions will be redirected to an "Employee Pension Stability Account." The Employee Pension Stability Account will be used to pay for part of the member's future pension benefit.
 - Tier One/Tier Two members: 2.5 percent of each member's IAP contribution amount, currently contributed to the IAP, (whether paid by the member or employer) will start going into an Employee Pension Stability Account (EPSA). The remainder will continue to go to the member's existing IAP account.
 - Members may voluntarily choose to make additional after-tax contributions into their IAP account to make a full, 6 percent contribution to the IAP.
5. Member Choice Project (effective January 1, 2021): IAP accounts are currently invested in Target-Date Funds based on a member's birth year. Beginning in 2021, members may choose to invest their IAP balance in a fund that is more reflective of their risk tolerance than the default based on their age.
6. Additionally, the Legislature directed the PERS Board to enact a one-time re-amortization of Tier 1/Tier 2 UAL over 22 years. This means that, effective with the December 31, 2019 rate-setting valuation, the entire unamortized Tier 1/Tier 2 UAL for each rate pool and independent employer will be re-amortized over a 22 year period as a level percentage of projected future payroll.

Death Benefits

Upon the death of a non-retired member, the beneficiary receives a lump-sum refund of the member's account balance (accumulated contributions and interest). In addition, the beneficiary will receive a lump-sum payment from employer funds equal to the account balance, provided one or more of the following conditions are met:

- the member was employed by an OPERS employer at the time of death,
- the member died within 120 days after termination of OPERS-covered employment,
- the member died as a result of injury sustained while employed in an OPERS-covered job, or
- the member was on an official leave of absence from an OPERS-covered job at the time of death.

Disability Benefits

A member with 10 or more years of creditable service who becomes disabled from other than duty-connected causes may receive a non-duty disability benefit. A disability resulting from a job-incurred injury or illness qualifies a member (including OPERS judge members) for disability benefits regardless of the length of OPERS-covered service. Upon qualifying for either a non-duty or duty disability, service time is computed to age 58 (55 for police and fire members) when determining the monthly benefit.

Benefit Changes After Retirement

Members may choose to continue participation in a variable equities investment account after retiring and may experience annual benefit fluctuations due to changes in the market value of equity investments.

Under ORS 238.360 monthly benefits are adjusted annually through cost-of-living changes (COLA). The COLA is capped at 2.0 percent.

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****PENSION PLAN (Cont.):**

2. OPSRP Defined Benefit Pension Program (OPSRP DB). The Pension Program (ORS Chapter 238A) provides benefits to members hired on or after August 29, 2003.

Pension Benefits

This portion of OPSRP provides a life pension funded by employer contributions. Benefits are calculated with the following formula for members who attain normal retirement age:

Police and fire: 1.8 percent is multiplied by the number of years of service and the final average salary. Normal retirement age for police and fire members is age 60 or age 53 with 25 years of retirement credit. To be classified as a police and fire member, the individual must have been employed continuously as a police and fire member for at least five years immediately preceding retirement.

General service: 1.5 percent is multiplied by the number of years of service and the final average salary. Normal retirement age for general service members is age 65, or age 58 with 30 years of retirement credit.

A member of the OPSRP Pension Program becomes vested on the earliest of the following dates: the date the member completes 600 hours of service in each of five calendar years, the date the member reaches normal retirement age, and, if the pension program is terminated, the date on which termination becomes effective.

During the 2019 Legislative session, Senate Bill 1049 was approved and signed into law by the governor. Under Senate Bill 1049, several components of the bill have significantly impacted the System, and the bill continues to be implemented.

1. Employer Programs Project (effective July 1, 2019): established the Employer Incentive Fund (EIF) Program, which allows eligible employers to receive matching funds if they apply and make a qualifying deposit into a side account.
2. Salary Limit Project: A new limitation on subject final average salary used for PERS benefit calculations and contributions is used to determine member IAP contributions, employer contributions to fund the pension program, and the Final Average Salary (FAS) used in calculating retirement benefits under formula methods was added (\$210,582 as of January 1, 2022). This amount will be indexed annually to the Consumer Price Index (CPI).
3. Work After Retirement Project (effective January 1, 2020): The 1,039-hour Work After Retirement limit for all PERS retirees is removed for calendar years 2020 through 2024. If a member retires on or after normal retirement age, starting in 2020, they can work for a PERS-covered employer and continue receiving their pension benefit (without accruing any new benefits) with no hour limitations. If a member retires earlier than normal retirement age, starting in 2020, they can work for a PERS-covered employer and continue receiving their pension benefit (without accruing any new benefits) with no hour limitations if the date of their employment is more than six months after their retirement date.
4. Member Redirect Project (effective July 1, 2020): For all currently employed Tier One/Tier Two and OPSRP members earning \$3,333/month in House Bill 2906 as of June 2021), a portion of their 6 percent monthly IAP contributions will be redirected to an "Employee Pension Stability Account." The Employee Pension Stability Account will be used to pay for part of the member's future pension benefit.
 - OPSRP members: 0.75 percent of each member's contribution, currently contributed to the IAP, (whether paid by the member or employer) will start going into their EPSA. The remaining 5.25 percent of the members contribution will continue to go to the member's existing IAP account.
 - Members may voluntarily choose to make additional after-tax contributions into their IAP account to make a full, 6 percent contribution to the IAP.

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****PENSION PLAN (Cont.):**

5. Member Choice Project (effective January 1, 2021): IAP accounts are currently invested in Target-Date Funds based on a member's birth year. Beginning in 2021, members may choose to invest their IAP balance in a fund that is more reflective of their risk tolerance than the default based on their age.

Death Benefits

Upon the death of a non-retired member, the spouse or other person who is constitutionally required to be treated in the same manner as the spouse, receives for life 50 percent of the pension that would otherwise have been paid to the deceased member.

Disability Benefits

A member who has accrued 10 or more years of retirement credits before the member becomes disabled or a member who becomes disabled due to job-related injury shall receive a disability benefit of 45 percent of the member's salary determined as of the last full month of employment before the disability occurred.

3. Individual Account Program (IAP).*Benefit Terms*

The IAP is an individual account-based program under the PERS tax-qualified governmental plan as defined under ORS 238A.400.

An IAP member becomes vested on the date the employee account is established or on the date the rollover account was established. If the employer makes optional employer contributions for a member, the member becomes vested on the earliest of the following dates: the date the member completes 600 hours of service in each of five calendar years, the date the member reaches normal retirement age, the date the IAP is terminated, the date the active member becomes disabled, or the date the active member dies.

Upon retirement, a member of the Individual Account Program (IAP) may receive the amounts in his or her employee account, rollover account, and vested employer account as a lump-sum payment or in equal installments over a 5-, 10-, 15-, 20-year period or an anticipated life span option.

Death Benefits

Upon the death of a non-retired member, the beneficiary receives in a lump sum the member's account balance, rollover account balance, and vested employer optional contribution account balance. If a retired member dies before the installment payments are completed, the beneficiary may receive the remaining installment payments or choose a lump-sum payment.

Recordkeeping

OPERS contracts with VOYA Financial to maintain IAP participant records.

4. Postemployment Healthcare Benefits.

ORS 238.420 established the Retirement Health Insurance Account (RHIA) and authorizes a payment of up to \$60 from RHIA toward the monthly cost of health insurance for eligible PERS members. RHIA is a cost-sharing, multiple-employer OPEB plan for 898 participating employers. The plan was closed to new entrants hired on or after August 29, 2003.

To be eligible to receive this monthly payment toward the premium costs, the member must: (1) have eight years or more of qualifying service in PERS at the time of retirement or receive a disability allowance as if the member had eight years or more of creditable service in PERS, (2) receive both Medicare Parts A and B coverage, and (3) enroll in a PERS-sponsored health plan.

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****PENSION PLAN (Cont.):****Description of Funding and Contributions for PERS Benefit Plans**

OPERS' funding policy provides for periodic member and employer contributions at rates established by the Public Employees Retirement Board, subject to limits set in statute. Contributions for employers are recognized on the accrual basis of accounting. Employer contributions to OPERS are calculated based on creditable compensation for active members reported by employers. The rates established for member and employer contributions were approved based on the recommendations of the System's third-party actuary. The contribution rate for every employer has at least two major components; Normal Cost Rate and Unfunded Actuarial Liability (UAL) Rate.

The City's employer contributions for the year ended June 30, 2023 were \$202,463 excluding amounts to fund employer specific liabilities.

The contribution rates in effect for the period July 1, 2021 to June 30, 2023 are: Tier1/Tier2 – 17.54%, OPSRP General Service – 15.21%, and OPSRP Fire and Police – 19.57%.

Member Contributions

Beginning January 1, 2004, all member contributions, except for contributions by judge members, were placed in the OPSRP Individual Account Program (IAP). Prior to that date, all member contributions were credited to the Defined Benefit Pension Plan. Member contributions are set by statute at 6.0 salary and are remitted by participating employers. The contributions are either deducted from member salaries or paid by the employers on the members' behalf.

During FY 2022-2023, approximately \$179,215 in employee IAP contributions were paid or picked up by the City.

Employer Contributions

PERS funding policy provides for monthly employer contributions at actuarially determined rates. These contributions, expressed as a percentage of covered payroll, are intended to accumulate sufficient assets to pay benefits when due. This funding policy applies to the PERS Defined Benefit Plan and OPEB (Other Post Employment Benefit) Plans. Employer contribution rates during the period were based on the December 31, 2019, actuarial valuation, which became effective July 1, 2021. The state of Oregon and certain schools, community colleges, and political subdivisions have made supplemental unfunded actuarial liability payments, and their rates have been reduced. Effective January 1, 2020, Senate Bill 1049 required employers to pay contributions on re-employed PERS retirees' salary as if they were an active member, excluding IAP (6%) contributions. Re-employed retirees do not accrue additional benefits while they work after retirement.

For **Oregon PERS Defined Benefit Plans**, Effective July 1, 2021, the contribution rate for State Agencies was 20.36%, the State and Local Government Rate Pool 28.08%, Schools 27.54%, Cities 28.64% and Judiciary 24.56% of PERS-covered salaries.

For **Oregon PERS OPSRP Benefit Plans**, all OPERS employers with OPSRP Pension Program members are actuarially pooled and share the same contribution rate. Each of these rates includes a component related to disability benefits for General Service and Police and Fire members.

Members of OPSRP are required to contribute 6.0% of their salary covered under the plan which is invested in the IAP. For employees in Tier One / Tier two, the Employer makes this contribution on behalf of its members.

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****PENSION PLAN (Cont.):**

For **Oregon PERS Postemployment Benefit Plans**, for the fiscal year ended June 30, 2023, PERS employers contributed 5.0% of PERS-covered salaries for Tier One and Tier Two members to fund the normal cost portion of RHIA benefits. No UAL rate was assigned for the RHIA program as it was funded at over 100% as of December 31, 2019. These rates were based on the December 31, 2019, actuarial valuation.

Employer contributions are advance-funded on an actuarially determined basis. There is no inflation assumption for RHIA postemployment benefits because the payment amount is set by statute and is not adjusted for increases in healthcare costs.

ORS 238.415 established the Retiree Health Insurance Premium Account (RHIPA) and requires the Board on or before January 1 of each year to calculate the average difference between the health insurance premiums paid by retired state employees under contracts entered into by the Board and health insurance premiums paid by active state employees.

For **OPSRP Pension Program**, all OPERS employers with OPSRP Pension Program members are actuarially pooled and share the same contribution rate. Each of these rates includes a component related to disability benefits for General Service and Police and Fire members.

Pension Plan CAFR/ ACFR

Oregon PERS produces an independently audited ACFR which can be found at: [2022-Annual-Comprehensive-Financial-Report.pdf \(oregon.gov\)](#)

Actuarial Valuations

The employer contribution rates effective July 1, 2021, through June 30, 2023, were set using the Entry Age Normal actuarial cost method.

For the Tier One/Tier Two component of the OPERS Defined Benefit Plan, this method produced an employer contribution rate consisting of (1) an amount for normal cost (the estimated amount necessary to finance benefits earned by the employees during the current service year), (2) an amount for the amortization of unfunded actuarial accrued liabilities, which are being amortized over a fixed period with new unfunded actuarial accrued liabilities being amortized over 20 years by ongoing Board policy. However, upon passage of Senate Bill 1049, the Legislature directed the PERS Board to enact a one-time re-amortization of Tier 1/Tier 2 UAL over 22 years. This means that, effective with the December 31, 2019 rate-setting valuation, the entire unamortized Tier 1/Tier 2 UAL for each rate pool and independent employer will be re-amortized over a 22 year period as a level percentage of projected future payroll.

For the OPSRP Pension Program component of the OPERS Defined Benefit Plan, this method produced an employer contribution rate consisting of (a) an amount for normal cost (the estimated amount necessary to finance benefits earned by the employees during the current service year), (b) an amount for the amortization of unfunded actuarial accrued liabilities, which are being amortized over a fixed period with new unfunded actuarial accrued liabilities being amortized over the same period of years.

For the Postemployment Healthcare component, the RHIA plan fiduciary net position balance represents the program's accumulation of employer contributions and investment earnings less premium subsidies and administrative expenses. No UAL rate was assigned for the RHIA program as it was funded over 100% as of December 31, 2019. Typically, PERS employers contribute an actuarially determined percent of all PERS-covered salaries to amortize the unfunded actuarial accrued liability over a fixed period with new unfunded actuarial accrued liabilities being amortized over 10 years.

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****PENSION PLAN (Cont.):****Actuarial Methods and Assumptions Used in Developing Total Pension Liability**

Actuarial Methods and Assumptions Used in Developing Total Pension Liability:	
Valuation Date	December 31, 2020
Measurement Date	June 30, 2022
Experience Study	2020, published July 24, 2021
Actuarial cost method	Entry Age Normal
Actuarial assumptions:	
Inflation rate	2.40 percent
Long-term expected rate of return	6.90 percent
Discount rate	6.90 percent
Projected salary increases	3.40 percent
Cost of living adjustments (COLA)	Blend of 2.00% COLA and graded COLA (1.25%/0.15%) in accordance with Moro decision; blend based on service.
Mortality	<p>Healthy retirees and beneficiaries: Pub-2010 Healthy Retiree, sex distinct, generational with Unisex, Social Security Data Scale, with job category adjustments and set-backs as described in the valuation.</p> <p>Active members: Pub-2010 Employee, sex distinct, generational with Unisex, Social Security Data Scale, with job category adjustments and set-backs as described in the valuation.</p> <p>Disabled retirees: Pub-2010 Disable Retiree, sex distinct, generational with Unisex, Social Security Data Scale, with job category adjustments and set-backs as described in the valuation.</p>

Actuarial valuations of an ongoing plan involve estimates of the value of projected benefits and assumptions about the probability of events far into the future. Actuarially determined amounts are subject to continual revision as actual results are compared to past expectations and new estimates are made about the future. Experience studies are performed as of December 31 of even numbered years. The methods and assumptions shown above are based on the 2020 Experience Study which reviewed experience for the four-year period ending on December 31, 2020.

Discount Rate

The discount rate used to measure the total pension liability was 6.90 percent for the Defined Benefit Pension Plan. The projection of cash flows used to determine the discount rate assumed that contributions from plan members and those of the contributing employers are made at the contractually required rates, as actuarially determined. Based on those assumptions, the pension plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on pension plan investments for the Defined Benefit Pension Plan was applied to all periods of projected benefit payments to determine the total pension liability.

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****PENSION PLAN (Cont.):***Depletion Date Projection*

GASB 67 generally requires that a blended discount rate be used to measure the Total Pension Liability (the Actuarial Accrued Liability calculated using the Individual Entry Age Normal Cost Method). The long-term expected return on plan investments may be used to discount liabilities to the extent that the plan's Fiduciary Net Position is projected to cover benefit payments and administrative expenses. A 20-year high quality (AA/Aa or higher) municipal bond rate must be used for periods where the Fiduciary Net Position is not projected to cover benefit payments and administrative expenses. Determining the discount rate under GASB 67 will often require that the actuary perform complex projections of future benefit payments and pension plan investments. GASB 67 (paragraph 43) does allow for alternative evaluations of projected solvency, if such evaluation can reliably be made. GASB does not contemplate a specific method for making an alternative evaluation of sufficiency; it is left to professional judgment.

The following circumstances justify an alternative evaluation of sufficiency for OPERS:

- OPERS has a formal written policy to calculate an Actuarially Determined Contribution (ADC), which is articulated in the actuarial valuation report.
- The ADC is based on a closed, layered amortization period, which means that payment of the full ADC each year will bring the plan to a 100% funded position by the end of the amortization period if future experience follows assumption.
- GASB 67 specifies that the projections regarding future solvency assume that plan assets earn the assumed rate of return and there are no future changes in the plan provisions or actuarial methods and assumptions, which means that the projections would not reflect any adverse future experience which might impact the plan's funded position.

Based on these circumstances, it is our independent actuary's opinion that the detailed depletion date projections outlined in GASB 67 would clearly indicate that the Fiduciary Net Position is always projected to be sufficient to cover benefit payments and administrative expenses.

OIC Target and Actual Investment Allocation as of June 30, 2022

<u>Asset Class/Strategy</u>	<u>OIC Policy Range</u>	<u>OIC Target Allocation</u>	<u>Asset Class/Strategy</u>	<u>Actual Allocation²</u>
Debt Securities	15.0% - 25.0%	20.0%	Debt Securities	19.8%
Public Equity	25.0% - 35.0%	30.0%	Public Equity	21.2%
Real Estate	7.5% - 17.5%	12.5%	Real estate	13.6%
Private Equity	15.0% - 27.5%	20.0%	Private Equity	28.0%
Risk Parity	0.0% - 3.5%	2.5%	Risk Parity	2.0%
Real Assets	2.5% - 10.0%	7.5%	Real Assets	7.9%
Diversifying Strategies	2.5% - 10.0%	7.5%	Diversifying Strategies	4.9%
Opportunity Portfolio ¹	0.0% - 5.0%	0.0%	Opportunity Portfolio	2.6%
Total		100%	Total	100%

¹Opportunity Portfolio is an investment strategy and it may be invested up to 5% of total plan net position.

²Based on the actual investment value at 6/30/2022.

³In October 2021 the Alternatives Portfolio was split into Real Assets and Diversifying Strategies.

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****PENSION PLAN (Cont.):***Long-Term Expected Rate of Return*

To develop an analytical basis for the selection of the long-term expected rate of return assumption, in June 2021 the Oregon PERS Board reviewed long-term assumptions developed by both Milliman's capital market assumptions team and the Oregon Investment Council's (OIC) investment advisors. Each asset class assumption is based on a consistent set of underlying assumptions and includes adjustment for the inflation assumption. These assumptions are not based on historical returns, but instead are based on a forward-looking capital market economic model. The table below shows Milliman's assumptions for each of the asset classes in which the plan was invested at that time based on the OIC long-term target asset allocation. The OIC's description of each asset class was used to map the target allocation to the asset classes shown below.

<u>Long Term Expected Rate of Return</u> ¹	Annual		20-Year	Annual
	Target	Arithmetic	Annualized	Standard
<u>Asset Class</u>	<u>Allocation</u>	<u>Return</u> ²	<u>Geometric Mean</u>	<u>Deviation</u>
Global Equity	30.62%	7.11%	5.85%	17.05%
Private Equity	25.50%	11.35%	7.71%	30.00%
Core Fixed Income	23.75%	2.80%	2.73%	3.85%
Real Estate	12.25%	6.29%	5.66%	12.00%
Master Limited Partnerships	0.75%	7.65%	5.71%	21.30%
Infrastructure	1.50%	7.24%	6.26%	15.00%
Commodities	0.63%	4.68%	3.10%	18.85%
Hedge Fund of Funds - Multistrategy	1.25%	5.42%	5.11%	8.45%
Hedge Fund Equity - Hedge	0.63%	5.85%	5.31%	11.05%
Hedge Fund - Macro	5.62%	5.33%	5.06%	7.90%
US Cash ³	-2.50%	1.77%	1.76%	1.20%
Assumed Inflation - Mean			2.40%	1.65%

¹Based on the Oregon Investment Council's (OIC) Statement of Investment Objectives and Policy Framework for the Oregon Public Employees Retirement Fund as most recently revised on June 2, 2021.

²The arithmetic mean is a component that goes into calculating the geometric mean. Expected rates of return are presented using the geometric mean, which the Board uses in setting the discount rate.

³Negative allocation to cash represents levered exposure from allocation to Risk Parity strategy.

Sensitivity Analysis

The following presents the employer's proportionate share of the net pension liability calculated using the discount rate of 6.90 percent, as well as what the employer's proportionate share of the net pension liability would be if it were calculated using a discount rate that is 1-percentage-point lower (5.90 percent) or 1-percentage-point higher (7.90 percent) than the current rate:

	1% Decrease	Discount Rate	1% Increase
	5.90%	6.90%	7.90%
Employer's proportionate share of the net pension liability	\$ 2,020,269	\$ 1,139,198	\$ 401,782

Changes Since Last Valuation

A summary of key changes implemented after the December 31, 2020 valuation, which was used in the 2022 PERS ACFR. Changes are described briefly below. Additional detail and a comprehensive list of changes in methods and assumptions can be found in the 2020 Experience Study for the System, which was published on July 20, 2021, which can be found at: [2020-Experience-Study.pdf \(oregon.gov\)](#)

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****PENSION PLAN (Cont.):****Changes in Actuarial Methods and Allocation Procedures**

There were no changes in actuarial methods and allocation procedures since the December 31, 2020 actuarial valuation.

Changes in Assumptions

The changes in assumptions since the December 31, 2020 actuarial valuation, were limited to non-annuitant Police and Fire Mortality, as shown below.

Mortality Rates

A summary of the current assumed mortality rates and recommended changes is shown below:

Assumption	Recommended December 31, 2020 and 2021 Valuations	Recommended December 31, 2022 and 2023 Valuations
Healthy Annuitant Mortality	Pub-2010 Healthy Retiree, Sex Distinct, Generational Projection with Unisex Social Security Data Scale	Pub-2010 Healthy Retiree, Sex Distinct, Generational Projection with Unisex Social Security Data Scale
School District male	Blend 80% Teachers and 20% General Employees, no set back	No change
Other General Service male (and male beneficiary)	General Employees, set back 12 months	No change
Police & Fire male	Public Safety, no set back	No change
School District female	Teachers, no set back	No change
Other female (and female beneficiary)	General Employees, no set back	No change
Police & Fire female	Public Safety, set back 12 months	No change
Disabled Retiree Mortality	Pub-2010 Disabled Retiree, Sex Distinct, Generational Projection with Unisex Social Security Data Scale	Pub-2010 Disabled Retiree, Sex Distinct, Generational Projection with Unisex Social Security Data Scale
Police & Fire male	Blended 50% Public Safety, 50% Non-Safety, no set back	No change
Other General Service male	Non-Safety, set forward 24 months	No change
Police & Fire female	Blended 50% Public Safety, 50% Non-Safety, no set back	No change
Other General Service female	Non-Safety, set forward 12 months	No change
Non-Annuitant Mortality	Pub-2010 Employee, Sex Distinct, Generational Projection with Unisex Social Security Data Scale	Pub-2010 Employee, Sex Distinct, Generational Projection with Unisex Social Security Data Scale
School District male	125% of same table and set back as Non-Disabled Annuitant assumption	No change
Other General Service male	115% of same table and set back as Non-Disabled Annuitant assumption	No change
Police & Fire male	100% of same table and set back as Non-Disabled Annuitant assumption	125% of same table and set back as Non-Disabled Annuitant assumption
School District female	100% of same table and set back as Non-Disabled Annuitant assumption	No change
Other General Service female	125% of same table and set back as Non-Disabled Annuitant assumption	No change
Police & Fire female	100% of same table and set back as Non-Disabled Annuitant assumption	No change

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****PENSION PLAN (Cont.):**Changes Subsequent to the Measurement Date

There were no changes subsequent to the measurement date, that we are aware of.

Deferred Items

Deferred items are calculated at the system-wide level and are allocated to employers based on their proportionate share. For the measurement period ending June 30, 2022, employers will report the following deferred items:

- A difference between expected and actual experience, which is being amortized over the remaining service lives of all plan participants, including retirees. One year of this amortization is included in the employer's total pension expense for the measurement period.

Employer Contributions

OPERS includes accrued contributions when due pursuant to legal requirements, as of June 30 in its Statement of Changes in Fiduciary Net Position.

Beginning with fiscal year 2016, OPERS will be able to report cash contributions and UAL side account amortization by employer and will publish this information on the OPERS Website. Prior to fiscal year 2016, contributions to the OPSRP Defined Benefit plan were not accounted for by employer, as all employers were pooled for actuarial purposes.

Elements of Changes in Net Position

This information can be found in the Schedule of Changes in Net Pension Liability found on page 76, of the June 30, 2022 Oregon PERS ACFR. [2022-Annual-Comprehensive-Financial-Report.pdf \(oregon.gov\)](#).

Pension Liabilities/(Assets), Pension Expense, and Deferred Outflows and Inflows of Resources Related to Pensions

On June 30, 2023, the employer reported a liability of \$1,139,198 for its proportionate share of the net pension liability. The net pension liability/(asset) was measured as of June 30, 2022, and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of that date. The employer's proportion of the net pension liability was based on a projection of the employer's long-term share of contributions to the pension plan relative to the projected contributions of all participating employers, actuarially determined.

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****PENSION PLAN (Cont.):**

At June 30, 2022, the employer's proportion was 0.00743990%

For the year ended June 30, 2023, the employer recognized pension expense of \$184,634. As of June 30, 2022, the employer reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	<u>Deferred Outflows of Resources</u>	<u>Deferred Inflows of Resources</u>
Differences between expected and actual experience	\$ 55,299	\$ 7,104
Changes of assumptions	178,746	1,633
Net difference between projected and actual earnings on investments	-	203,667
Changes in proportionate share	228,692	34,722
Differences between employer contributions and employer's proportionate share of system contributions	-	151,336
Total Deferred Outflows/Inflows	<u>\$ 462,737</u>	<u>\$ 398,462</u>
Post-measurement date contributions	202,463	N/A
Total Deferred Outflow/(Inflow) of Resources	<u>\$ 665,200</u>	<u>\$ 398,462</u>
Net Deferred Outflow/(Inflow) of Resources prior to post-measurement date contributions		<u>\$ 64,275</u>

Contributions of \$202,463, for PERS defined benefits, were made subsequent to the measurement date, but prior to the end of the District's reporting period. These contributions, which are reported as deferred outflows of resources related to pensions, will be included as a reduction of the net pension liability in next fiscal year.

Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized in pension expense/(income) as follows:

<u>Employer subsequent fiscal years</u>	<u>Deferred Outflow/(Inflow) of Resources (prior to post-measurement date contributions)</u>
1st Fiscal Year	\$ 34,813
2nd Fiscal Year	20,054
3rd Fiscal Year	(65,787)
4th Fiscal Year	85,586
5th Fiscal Year	(10,391)
Total	<u>\$ 64,275</u>

CITY OF COBURG

NOTES TO THE BASIC FINANCIAL STATEMENTS

June 30, 2023

OTHER POST-EMPLOYMENT BENEFITS (OPEB) RHIA:

Oregon Public Employees Retirement Systems' (OPERS) Retiree Health Insurance Account (RHIA)

Plan Description

The City contributes to the Oregon Public Employees Retirement Systems' (OPERS) Retiree Health Insurance Account (RHIA), a cost-sharing multiple-employer defined benefit post-employment healthcare plan administered by the Oregon Public Employees Retirement Board (OPERB). The plan, which was established under Oregon Revised Statutes 238.420, provides a payment of up to \$60 per month towards the costs of health insurance for eligible OPERS retirees. RHIA post-employment benefits are set by state statute. The plan was closed to new entrants hired on or after August 29, 2003.

To be eligible to receive this monthly payment toward the premium cost the member must: (1) have eight years or more of qualifying service in OPERS at the time of retirement or receive a disability allowance as if the member had eight years or more of creditable service in OPERS, (2) receive both Medicare Parts A and B coverage, and (3) enroll in an OPERS-sponsored health plan. A surviving spouse or dependent of a deceased OPERS retiree who was eligible to receive the subsidy is eligible to receive the subsidy if he or she (1) is receiving a retirement benefit or allowance from OPERS or (2) was insured at the time the member died and the member retired before May 1, 1991.

Employer contributions are advance-funded on an actuarially determined basis. There is no inflation assumption for RHIA postemployment benefits because the payment amount is set by statute and is not adjusted for increases in healthcare costs.

A comprehensive annual financial report of the funds administered by the OPERB may be obtained by writing to Oregon Public Employees Retirement System, P.O. Box 23700, Tigard, OR 97281-3700, by calling (503) 598-7377, or by accessing the OPERS web site at [2022-Annual-Comprehensive-Financial-Report.pdf \(oregon.gov\)](https://www.opers.gov/2022-Annual-Comprehensive-Financial-Report.pdf).

Funding Policy

Participating employers are contractually required to contribute at a rate assessed bi-annually by the OPERB. For the fiscal year ended June 30, 2022, PERS employers contributed 0.05% of PERS-covered salaries for Tier One and Tier Two members to fund the normal cost portion of RHIA benefits. No unfunded actuarial liability (UAL) rate was assigned for the RHIA program as it was funded over 100% as of December 31, 2019. Typically, PERS employers contribute an actuarially determined percent of all PERS-covered salaries to amortize the unfunded actuarial accrued liability over a fixed period with new unfunded actuarial accrued liabilities being amortized over 10 years. These rates were based on the December 31, 2019, actuarial valuation.

Contributions

The City's contributions to OPERS' RHIA for the years ended June 30, 2023, 2022, and 2021 were \$171, \$174 and \$141 respectively, which equaled the required contributions for the year.

Actuarial Methods and Assumptions Used in Developing Total Pension Liability

All assumptions, methods and plan provisions used in these calculations are described in the Oregon PERS Retirement Health Insurance Account Cost Sharing Multiple Employer Other Postemployment Benefit (OPEB) Plan Schedules of Employer Allocations and OPEB Amounts by Employer report, as of and for the Year Ended June 30, 2021. That independently audited report was dated February 25, 2022 and can be found at:

<https://sos.oregon.gov/audits/Documents/2022-09.pdf>

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****OTHER POST-EMPLOYMENT BENEFITS (OPEB) RHIA (Cont.):**

Actuarial Methods and Assumptions - OPEB Plans - RHIA	
	RHIA
Valuation Date	December 31, 2020
Measurement Date	June 30, 2022
Experience Study	2020, published July 20, 2021
Actuarial cost method	Entry Age Normal
Actuarial assumptions:	
Inflation rate	2.40 percent
Long-term expected rate of return	6.90 percent
Discount rate	6.90 percent
Projected salary increases	3.40 percent
Retiree healthcare participation	Healthy retirees: 27.5% Disabled retirees: 15%
Healthcare cost trend rate	Not applicable
Mortality	<p>Healthy retirees and beneficiaries: Pub-2010 Healthy Retiree, sex distinct, generational with Unisex, Social Security Data Scale, with job category adjustments and set-backs as described in the valuation.</p> <p>Active members: Pub-2010 Employee, sex distinct, generational with Unisex, Social Security Data Scale, with job category adjustments and set-backs as described in the valuation.</p> <p>Disabled retirees: Pub-2010 Disable Retiree, sex distinct, generational with Unisex, Social Security Data Scale, with job category adjustments and set-backs as described in the valuation.</p>

Actuarial valuations of an ongoing plan involve estimates of value of reported amounts and assumptions about the probability of events far into the future. Actuarially determined amounts are subject to continual revision as actual results are compared to past expectations and new estimates are made about the future. Experience studies are performed as of December 31 of even numbered years. The method and assumptions shown are based on the 2020 Experience Study which is reviewed for the four-year period ending December 31, 2022.

Discount Rate

The discount rate used to measure the total OPEB liability was 6.90 percent. The projection of cash flows used to determine the discount rate assumed that contributions from contributing employers are made at the contractually required rates, as actuarially determined. Based on those assumptions, the RHIA plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long term expected rate of return on OPEB plan investments for the RHIA plan was applied to all periods of projected benefit payments to determine the total OPEB liability.

CITY OF COBURG

NOTES TO THE BASIC FINANCIAL STATEMENTS

June 30, 2023

OTHER POST-EMPLOYMENT BENEFITS (OPEB) RHIA (Cont.):

Long-Term Expected Rate of Return

To develop an analytical basis for the selection of the long-term expected rate of return assumption, in June 2021 the PERS Board reviewed long-term assumptions developed by both Milliman’s capital market assumptions team and the Oregon Investment Council’s (OIC) investment advisors. Table 31 on page 74 shows Milliman’s assumptions for each of the asset classes in which the plans were invested at that time based on the OIC long-term target asset allocation. The OIC’s description of each asset class was used to map the target allocation to the asset classes shown on page 74. Each asset class assumption is based on a consistent set of underlying assumptions and includes adjustment for the inflation assumption. These assumptions are not based on historical returns, but instead are based on a forward-looking capital market economic model. For more information on the Plan’s portfolio, assumed asset allocation, and the long-term expected rate of return for each major class, calculated using both arithmetic and geometric means, see Pension Plan note disclosure above or the PERS’ audited financial statements at: <https://sos.oregon.gov/audits/Documents/2022-09.pdf>

Sensitivity Analysis

The following presents the employer’s proportionate share of the net OPEB liability/(asset) calculated using the discount rate of 6.90 percent, as well as what the employer’s proportionate share of the OPEB liability/(asset) would be if it were calculated using a discount rate that is 1-percentage-point lower (5.90 percent) or 1-percentage-point higher (7.90 percent) than the current rate:

	1% Decrease 5.90%	Discount Rate 6.90%	1% Increase 7.90%
Employer's proportionate share of the net OPEB liability	\$ (22,642)	\$ (25,123)	\$ (27,248)

OPEB Liabilities/(Assets), OPEB Expense, and Deferred Outflows and Inflows of Resources Related to OPEB

At June 30, 2023, the City reported a net OPEB RHIA liability/(asset) of \$(25,123) for its proportionate share of the net OPEB RHIA liability/(asset). The OPEB liability/(asset) was measured as of June 30, 2022, and the total OPEB RHIA liability/(asset) used to calculate the net OPEB RHIA liability/(asset) was determined by an actuarial valuation as of December 31, 2020. Consistent with GASB Statement No. 75, paragraph 59(a), The City’s proportion of the net OPEB RHIA liability/(asset) is determined by comparing the employer’s actual, legally required contributions made during the fiscal year to the Plan with the total actual contributions made in the fiscal year of all employers. As of the measurement date of June 30, 2022, the City’s proportion was 0.00707009 percent. OPEB RHIA expense/(income) recorded for the year ended June 30, 2023 was \$(4,437).

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****OTHER POST-EMPLOYMENT BENEFITS (OPEB) RHIA:**

On June 30, 2023, the employer reported deferred outflows of resources and deferred inflows of resources related to OPEB from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences between expected and actual experience	\$ -	\$ 681
Changes of assumptions	197	837
Net difference between projected and actual earnings on investments	-	1,916
Changes in proportionate share	799	2,737
Total Deferred Outflows/Inflows	\$ 996	\$ 6,171
Post-measurement date contributions	171	N/A
Total Deferred Outflow/(Inflow) of Resources	<u>\$ 1,167</u>	<u>\$ 6,171</u>
Net Deferred Outflow/(Inflow) of Resources prior to post-measurement date contributions		<u>\$ (5,175)</u>

Contributions of \$171 were made subsequent to the measurement date, but prior to the end of the City's reporting period. These contributions, which are reported as deferred outflows (inflows) of resources related to OPEB, will be included as a reduction of the net OPEB liability in next fiscal year.

Deferred outflows of resources and deferred inflows of resources related to OPEB's will be recognized in OPEB expense as follows:

<u>Employer subsequent fiscal years</u>	<u>Deferred Outflow/(Inflow) of Resources (prior to post-measurement date contributions)</u>
1st Fiscal Year	\$ (2,502)
2nd Fiscal Year	(2,078)
3rd Fiscal Year	(1,209)
4th Fiscal Year	614
Total	<u>\$ (5,175)</u>

Changes Subsequent to the Measurement Date

We are not aware of any changes subsequent to the June 30, 2022 Measurement Date that meet this requirement and thus require a brief description under the GASB standard.

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****OTHER POST-EMPLOYMENT BENEFITS (OPEB) CIS (IRSP):***Retiree Healthcare Insurance Premiums Subsidy***Plan Description**

The City operates a single employer retiree benefit plan through the Citycounty Insurance Services that provides post-employment health, dental vision and life insurance benefits to eligible employees and their spouses. The City is required by Oregon Revised Statutes 243.303 to provide retirees and their dependents with group health insurance from the date of retirement to age 65 at the same rate provided to current employees. Premiums for retirees are tiered and based upon the premium rates available to active employees. The retiree is responsible for any portion of the premiums not paid by the Employer. The implicit employer subsidy is measured as the expected health care cost per retiree and dependent, less the gross premiums charged by the insurance carrier for that coverage. The subsidy is only measured for retirees and spouses younger than age 65, at which point such retirees and spouses typically become eligible for Medicare. GASB Statement 75 is applicable to the City due only to this implicit rate subsidy. This “plan” is not a stand-alone plan, and therefore, does not issue its own financial statements.

Funding Policy

When the City has retirees participating in their health insurance plan, it will, when applicable, collect insurance premiums from all retirees each month and deposit them. The City will then pay healthcare insurance premiums for all retirees at the applicable rate for each family classification.

At June 30, 2023, the City reported a net OPEB IRSP liability/(asset) of \$46,590 for its proportionate share of the net OPEB IRSP liability/(asset). The OPEB IRSP liability/(asset) was measured as of June 30, 2022, and the total OPEB IRSP liability/(asset) used to calculate the net OPEB IRSP liability/(asset) was determined by an actuarial valuation as of July 1, 2022. Consistent with GASB Statement No. 75, paragraph 59(a), The City’s proportion of the net OPEB IRSP liability/(asset) is determined by comparing the employer’s actual, legally required contributions made during the fiscal year to the Plan with the total actual contributions made in the fiscal year of all employers. As of the measurement date of June 30, 2022, the City’s OPEB IRSP expense/(income) for the year ended June 30, 2023 was \$5,075.

Actuarial Methods and Assumptions - The City engaged an actuary to perform an evaluation as of July 1, 2022, using entry age normal Actuarial Cost Method. The total OPEB liability was determined by an actuarial valuation as of the valuation date, calculated based on the discount rate and actuarial assumptions below, and was then projected forward to the measurement date:

Fiscal Year Ending	June 30, 2022	June 30, 2023	June 30, 2024
Discount Rate	2.16%	3.54%	3.65%
Other Key Actuarial Assumptions and Methods			
Valuation date	July 1, 2020	July 1, 2022	July 1, 2022
Measurement date	June 30, 2021	June 30, 2022	June 30, 2023
Inflation	2.50%	2.40%	2.40%
Salary increases	3.50%	3.40%	3.40%
Withdrawal, retirement, and mortality rates	December 31, 2019 Oregon PERS valuation	December 31, 2021 Oregon PERS valuation	December 31, 2021 Oregon PERS valuation
Election and Lapse Rates	40% of eligible employees. 60% of male members and 35% of female members will elect spouse coverage. 5% annual lapse rate	40% of eligible employees. 60% of male members and 35% of female members will elect spouse coverage. 5% annual lapse rate	40% of eligible employees. 60% of male members and 35% of female members will elect spouse coverage. 5% annual lapse rate
Actuarial cost method	Entry Age Normal	Entry Age Normal	Entry Age Normal

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****OTHER POST-EMPLOYMENT BENEFITS (OPEB) CIS (IRSP) (Cont.):**Discount Rate

Under GASB 75, unfunded plans must use a discount rate that reflects a 20-year tax-exempt municipal bond yield or index rate. The assumptions in this report reflect the Bond Buyer 20-Year General Obligation Bond Index. The discount rate in effect for the June 30, 2022 reporting date 2.16%, and the discount rate in effect for the June 30, 2023 reporting date is 3.54%.

Health Care Cost Trend

The assumed medical and vision costs will increase 4.25% in the first year (July 1, 2022 premiums compared with July 1, 2021 premiums). In future years, the medical and vision cost trend varies between 6.75% and 3.75%.

Withdrawal, Retirement and Mortality Rates

They are generally using the rates adopted by the Oregon Public Employees Retirement System (OPERS) for its December 31, 2021 actuarial valuation of retirement benefits.

Election and Lapse Rates

They have assumed that a portion of future retirees and their spouses elect benefits, and that some of those later lapse (drop) from those benefits. The assumptions are based on historical data for similar benefits for other public employers in Oregon. For larger employers, they also consider specific historical experience; and for unique arrangements they consider the incentives provided by those arrangements.

Sensitivity Analysis

The following presents the total OPEB IRSP liability of the Plan, calculated using the disclosure discount rate as well as what the Plan's total OPEB IRSP liability would be if it were calculated using a discount rate that is 1 percentage point lower or 1 percentage point higher than the current rate. A similar sensitivity analysis is then presented for changes in the healthcare cost trend assumption.

	1% Decrease 2.54%	Discount Rate 3.54%	1% Increase 4.54%
Total OPEB liability from Implicit Rate Subsidy	\$ 51,570	\$ 46,590	\$ 42,026
	<hr/>		
	1% Decrease	Trend Rate	1% Increase
Total OPEB liability from Implicit Rate Subsidy	\$ 39,348	\$ 46,590	\$ 55,408

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****OTHER POST-EMPLOYMENT BENEFITS (OPEB) CIS (IRSP) (Cont.):**Participation

The following table represents the number of the City's covered participants at the time of the actuarial study:

Members as of Valuation Date July 1, 2022	PERS Police & Fire	PERS General Service	Total
Number of Members			
Active	5	11	16
Retired Members	0	0	0
Spouses of Ineligible Retirees	0	0	0
Total Participants	5	11	16
Spouses of Eligible Retirees	0	0	0

Changes in Net OPEB CIS IRSP Liability

Changes in Total OPEB Implicit Subsidy Plan Liability	Increase (Decrease) Total OPEB Liability
Balance as of June 30, 2022	\$ 42,319
Changes for the year:	
Service Cost	6,876
Interest	1,059
Effect of economic/ demographic gains or losses	9,651
Effect of assumptions or other inputs	(12,952)
Benefit payments	(363)
Net OPEB Liability at June 30, 2023	\$ 46,590

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023****OTHER POST-EMPLOYMENT BENEFITS (OPEB) CIS (IRSP) (Cont.):**Components of OPEB IRSP Expense

OPEB Implicit Subsidy Plan Expense	July 1, 2022 to June 30, 2023
Service cost	\$ 6,876
Interest on total OPEB liability	1,059
Recognition of Deferred (Inflows)/Outflows of Resources	-
Recognition of economic/demographic (gains) or losses	(1,029)
Recognition of assumption changes	<u>(1,831)</u>
OPEB Expense	<u>\$ 5,075</u>

Schedule of Deferred Inflows and Outflows of Resources for OPEB CIS IRSP

	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences between expected and actual experience	\$ 8,741	\$ 10,763
Changes of assumptions or inputs	<u>1,035</u>	<u>15,328</u>
(prior to post-measurement date contributions)	<u>\$ 9,776</u>	<u>\$ 26,091</u>
Net Deferred Outflow/(Inflow) of Resources prior to post-measurement date contributions		<u>\$ (16,315)</u>

Other amounts currently reported as deferred outflows of resources and deferred inflows of resources related to other postemployment benefits will be recognized in OPEB CIS IRSP expense as follows:

<u>Employer subsequent fiscal years</u>	<u>Deferred Outflow/(Inflow) of Resources (prior to post-measurement date contributions)</u>
1st Fiscal Year	\$ (2,860)
2nd Fiscal Year	(2,860)
3rd Fiscal Year	(2,860)
4th Fiscal Year	(2,734)
5th Fiscal Year	(2,547)
Thereafter	(2,454)
Total	<u>\$ (16,315)</u>

CITY OF COBURG**NOTES TO THE BASIC FINANCIAL STATEMENTS****June 30, 2023**

CONTINGENT LIABILITIES:

Amounts received or receivable from grantor agencies are subject to review and adjustment by grantor agencies, principally the federal government. Any disallowed claims, including amounts already collected, may constitute a liability of the applicable funds. The amount, if any, of expenditures the grantor may disallow cannot be determined at this time, although the City expects such amount to be immaterial.

The City of Coburg has elected the "reimbursement" basis for unemployment claims to the State of Oregon Department of Human Resources Employment Division. If a terminated employee collects unemployment compensation based upon earnings from the City, the City will be required to reimburse the State of Oregon for the unemployment compensation paid. Amounts billed by the State of Oregon are charged to expenditures but amounts for which the City is potentially liable as a result of claims not yet filed are unknown.

RISK MANAGEMENT:

The City is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; errors and omissions; injuries to employees; and natural disasters. The City is a member of City-County Insurance Services (CIS), a public entity risk pool currently operating a common risk management and insurance program. The City pays an annual premium to CIS for insurance coverage.

Based on the experience of the City and pool, the City may be liable for an additional premium of up to approximately 20% of its initial premium or receive a refund. The City has never had to pay an additional premium. Predetermined limits and deductible amounts are stated in the policy. There have been no significant reductions in coverage from the prior years, and settlements have not exceeded insurance coverage in the past three years.

INTERFUND RECEIVABLES, PAYABLES, AND TRANSFERS:

The City makes various interfund transfers to move resources between funds to provide resources for expenditures not supported by other revenues. The transfers are part of the City's budget preparation and adoption.

During the Fiscal year ended June 30, 2023 the URA Fund had interfund payables to the Sewer Fund in the form of Materials and Services in the amount of \$375,000.

REQUIRED
SUPPLEMENTARY
INFORMATION

CITY OF COBURG
Schedule of Revenues, Expenditures,
and Changes in Fund Balance - Budget and Actual
GENERAL FUND
For the Fiscal Year Ended June 30, 2023

	<u>Budgeted Amounts</u>		Actual Amounts (Budgetary Basis) (See Note 1)	Variance with Final Budget Over (Under)
	<u>Original</u>	<u>Final</u>		
<u>REVENUES:</u>				
Taxes and Assessments	\$ 926,213	\$ 926,213	\$ 905,168	\$ (21,045)
Intergovernmental	84,340	84,340	74,980	(9,360)
Franchise Fees	280,008	280,008	223,908	(56,100)
Licenses, Permits, & Misc Fees	220,177	220,177	170,558	(49,619)
Fines and Forfeitures	124,648	124,648	104,895	(19,753)
Investment Revenue	16,114	16,114	11,865	(4,249)
Grants and Donations	671,907	671,907	130,687	(541,220)
Charges for Services	224,830	224,830	200,767	(24,063)
Interdepartmental Charges	878,804	878,804	878,804	-
Other Revenue	82,892	82,892	54,331	(28,561)
Total Revenues	<u>3,509,933</u>	<u>3,509,933</u>	<u>2,755,963</u>	<u>(753,970)</u>
<u>EXPENDITURES:</u>				
Administration Department	881,047	881,047	753,659	(127,388)
Facility Management Department	92,840	92,840	81,932	(10,908)
Planning Department	190,334	190,334	189,028	(1,306)
Police Department	930,000	930,000	828,728	(101,272)
Municipal Court	166,462	166,462	154,220	(12,242)
Economic Development	203,121	203,121	91,416	(111,705)
Park	247,215	247,215	50,599	(196,616)
Public Works Administration	612,928	612,928	563,245	(49,683)
Not Allocated to an Organizational Unit:				
Debt Service	30,150	30,150	30,149	(1)
Principal	15,000	15,000	15,000	-
Interest	15,150	15,150	15,149	(1)
Contingency	200,000	200,000	-	(200,000)
Total Expenditures	<u>3,554,097</u>	<u>3,554,097</u>	<u>2,742,976</u>	<u>(811,121)</u>
Excess (Deficiency) of Revenues				
Over Expenditures	(44,164)	(44,164)	12,987	57,151
Net Change in Fund Balance	(44,164)	(44,164)	12,987	57,151
Fund Balance - July 1, 2022	705,000	705,000	438,869	(266,131)
Prior Period Adjustment	-	-	-	-
Fund Balance - June 30, 2023	<u>\$ 660,836</u>	<u>\$ 660,836</u>	<u>\$ 451,856</u>	<u>\$ (208,980)</u>

CITY OF COBURG
Schedule of Revenues, Expenditures,
and Changes in Fund Balance - Budget and Actual
STREET FUND
For the Fiscal Year Ended June 30, 2023

	<u>Budgeted Amounts</u>		Actual	Variance with
	<u>Original</u>	<u>Final</u>	Amounts (Budgetary Basis) (See Note 1)	Final Budget Over (Under)
<u>REVENUES:</u>				
Intergovernmental	\$ 458,900	\$ 458,900	\$ 400,306	\$ (58,594)
Grants	100,000	100,000	140,000	40,000
Investment Revenue	1,848	1,848	9,410	7,562
Miscellaneous Revenue	267,004	267,004	209,335	(57,669)
Total Revenues	827,752	827,752	759,051	(68,701)
<u>EXPENDITURES:</u>				
Street	200,109	200,109	121,273	(78,836)
Street Capital	2,025,706	2,025,706	1,682,712	(342,994)
Contingency	200,000	200,000	-	(200,000)
Debt Service	150,000	150,000	-	(150,000)
Total Expenditures	2,575,815	2,575,815	1,803,985	(771,830)
Excess (Deficiency) of Revenues Over Expenditures	(1,748,063)	(1,748,063)	(1,044,934)	703,129
<u>OTHER FINANCING SOURCES / (USES):</u>				
Proceeds from Bond Sales	1,800,000	1,800,000	999,500	800,500
Total Other Financing Sources (Uses)	1,800,000	1,800,000	999,500	800,500
Net Change In Fund Balance	51,937	51,937	(45,434)	1,503,629
Fund Balance - July 1, 2022	896,000	896,000	957,572	61,572
Fund Balance - June 30, 2023	\$ 947,937	\$ 947,937	\$ 912,138	\$ 1,565,201

CITY OF COBURG
**Schedule of Revenues, Expenditures,
and Changes In Fund Balance - Budget and Actual**
URBAN RENEWAL AGENCY FUND
(A Component Unit of the City of Coburg)
For the Fiscal Year Ended June 30, 2023

	<u>Budgeted Amounts</u>		<u>Actual Amounts</u>	Variance with Final Budget Over (Under)
	<u>Original</u>	<u>Final</u>		<u>Amounts</u>
<u>REVENUES:</u>				
Taxes and Assessments	\$ 382,000	\$ 382,000	\$ 436,017	\$ 54,017
Investment Revenue	2,000	2,000	7,154	5,154
Total Revenues	384,000	384,000	443,171	59,171
<u>EXPENDITURES:</u>				
Materials and Supplies	387,125	387,125	376,695	(10,430)
Total Expenditures	387,125	387,125	376,695	(10,430)
Excess (Deficiency) of Revenues Over Expenditures	(3,125)	(3,125)	66,476	69,601
Net Change In Fund Balance	(3,125)	(3,125)	66,476	69,601
Fund Balance - July 1, 2022	27,642	27,642	36,504	8,862
Fund Balance - June 30, 2023	\$ 24,517	\$ 24,517	\$ 102,980	\$ 78,463

CITY OF COBURG
SCHEDULE OF PROPORTIONATE SHARE OF THE
NET PENSION LIABILITY
PERS
Last 10 Fiscal Years*

Measurement Date June 30,	(a) Employer's proportion of the net pension liability (asset)	(b) Employer's proportionate share of the net pension liability (asset)	(c) Employer's covered payroll	(b/c) Employer's proportionate share of the net pension liability (asset) as a percentage of its covered payroll	Plan fiduciary net position as a percentage of the total pension liability
2023	0.00743990%	\$ 1,139,198	\$ 1,072,660	106.20%	84.5%
2022	0.00757498%	906,458	987,310	91.81%	87.6%
2021	0.00636919%	1,389,976	722,383	192.42%	75.8%
2020	0.00480466%	831,091	811,306	102.44%	80.2%
2019	0.00534755%	810,083	746,600	108.50%	82.1%
2018	0.00571827%	770,825	768,473	100.31%	81.3%
2017	0.00542243%	814,033	680,984	119.54%	80.5%
2016	0.00467319%	268,309	675,338	39.73%	91.9%
2015	0.00517355%	(117,270)	416,570	-28.15%	103.6%

*This schedule is presented to illustrate the requirement to show information for 10 years. However the full 10-year trend will be presented for those years for which information is available

CITY OF COBURG
SCHEDULE OF EMPLOYER CONTRIBUTIONS
PERS
Last 10 Fiscal Years*

Year Ended June 30,	(a) Contractually required contribution	(b) Contributions in relation to the contractually required contribution	(a-b) Contribution deficiency (excess)	(c) Employer's covered payroll	(b/c) Contributions as a percent of covered payroll
2023	\$ 266,822	\$ 266,822	\$ -	\$ 1,072,660	24.87%
2022	240,630	240,630	-	987,310	24.37%
2021	161,461	161,461	-	722,383	22.35%
2020	145,514	145,514	-	811,306	17.94%
2019	112,389	112,389	-	746,600	15.05%
2018	104,054	104,054	-	768,473	13.54%
2017	83,006	83,006	-	680,984	12.19%
2016	82,856	82,856	-	675,338	12.27%
2015	45,190	45,190	-	416,570	10.85%
2014	45,098	45,098	-	577,960	7.80%

CITY OF COBURG
SCHEDULE OF PROPORTIONATE SHARE OF THE
NET OPEB LIABILITY
OPEB RHIA
Last 10 Fiscal Years*

Measurement Date June 30,	(a) Employer's proportion of the net OPEB liability (asset)	(b) Employer's proportionate share of the net OPEB liability (asset)	(c) Employer's covered payroll	(b/c) Employer's proportionate share of the net OPEB liability (asset) as a percentage of its covered payroll	Plan fiduciary net position as a percentage of the total OPEB liability
2023	0.00707009%	\$ (25,123)	\$ 1,072,660	-2.34%	194.6%
2022	0.00527308%	(18,108)	987,310	-1.83%	183.9%
2021	0.00687514%	(13,968)	722,383	-1.93%	150.1%
2020	0.00687559%	(13,286)	811,306	-1.64%	144.4%
2019	0.00679127%	(7,581)	746,600	-1.02%	124.0%
2018	0.00646188%	(2,697)	768,473	-0.35%	108.9%
2017	0.00724014%	1,966	680,984	0.29%	94.2%

*This schedule is presented to illustrate the requirement to show information for 10 years. However the full 10-year trend will be presented for those years for which information is available

CITY OF COBURG
SCHEDULE OF EMPLOYER CONTRIBUTIONS
OPEB RHIA
Last 10 Fiscal Years*

Year Ended June 30,	(a) Contractually required contribution	(b) Contributions in relation to the contractually required contribution	(a-b) Contribution deficiency (excess)	(c) Employer's covered employee payroll	(b/c) Contributions as a percent of covered payroll
2023	\$ 171	\$ 171	-	\$ 1,072,660	0.02%
2022	174	174	-	987,310	0.02%
2021	141	141	-	722,383	0.02%
2020	490	490	-	811,306	0.06%
2019	3,408	3,408	-	746,600	0.46%
2018	3,288	3,288	-	768,473	0.43%
2017	3,031	3,031	-	680,984	0.45%
2016	3,257	3,257	-	675,338	0.48%

*This schedule is presented to illustrate the requirement to show information for 10 years. However the full 10-year trend will be presented for those years for which information is available

CITY OF COBURG**SCHEDULE OF CHANGES IN TOTAL OPEB LIABILITY
AND RELATED RATIOS****Last 10 Fiscal Years***

	2023	2022	2021	2020	2019	2018
Total OPEB Liability						
Service cost	\$ 6,876	\$ 6,677	\$ 5,227	\$ 5,724	\$ 5,558	\$ 5,243
Interest on total OPEB liability	1,059	911	1,343	1,277	1,178	1,174
Effect of changes to benefit terms	-	-	-	-	-	-
Effect of economic/demographic gains or (losses)	9,651		(4,357)	-	(15,480)	-
Effect of assumption changes or inputs	(12,952)	220	(679)	980	(3,777)	(2,995)
Benefit payments	(363)	(86)	(178)	(827)	(680)	(143)
Net change in total OPEB liability **	-	-	-	-	-	-
Total OPEB liability, beginning	42,319	34,597	33,241	26,087	39,288	36,009
Total OPEB liability, ending (a) **	46,590	42,319	34,597	33,241	26,087	39,288
Covered payroll	\$1,072,660	\$ 987,310	\$ 722,383	\$ 811,306	\$ 746,600	\$ 768,473
Total OPEB liability as a % of covered payroll **	4.3%	4.3%	4.8%	4.1%	3.5%	5.1%

This schedule is presented to illustrate the requirement to show information for 10 years. However, recalculations of prior years are not required, and if prior years are not reported in accordance with the current GASB standards, they should not be reported.

** Totals may not agree due to rounding.

SUPPLEMENTARY
INFORMATION

Proprietary Funds

CITY OF COBURG
Schedule of Revenues, Expenditures,
and Changes in Fund Balance - Budget and Actual
WATER FUND
For the Fiscal Year Ended June 30, 2023

	Budgeted Amounts		Actual Amounts (Budgetary Basis) (See Note 1)	Variance with Final Budget Over (Under)
	Original	Final		
<u>REVENUES:</u>				
Charges for Services	\$ 1,073,444	\$ 1,073,444	\$ 1,001,629	\$ (71,815)
Investment Revenue	1,782	1,782	38,294	36,512
Other Revenue	4,500	4,500	93,650	89,150
Total Revenues	1,079,726	1,079,726	1,133,573	53,847
<u>EXPENDITURES:</u>				
Water	415,180	415,180	412,744	(2,436)
Contingency	200,000	200,000	-	(200,000)
Water Capital Outlay	4,035,228	4,035,228	1,908,013	(2,127,215)
Debt Service				
Principal	320,000	320,000	170,000	(150,000)
Interest	12,150	12,150	17,150	5,000
Total Expenditures	4,982,558	4,982,558	2,507,907	(2,474,651)
Excess (Deficiency) of Revenues Over Expenditures	(3,902,832)	(3,902,832)	(1,374,334)	2,528,498
<u>OTHER FINANCING SOURCES / (USES):</u>				
Loan Proceeds	2,902,500	2,902,500	810,234	(2,092,266)
Total Other Financing Sources (Uses)	2,902,500	2,902,500	810,234	(2,092,266)
Net Change In Fund Balance	(1,000,332)	(1,000,332)	(564,100)	436,232
Fund Balance - July 1, 2022	1,567,000	1,567,000	1,717,502	150,502
Fund Balance - June 30, 2023	\$ 566,668	\$ 566,668	\$ 1,153,402	\$ 586,734

Reconciliation to generally accepted accounting principles basis

Net Change in Fund Balance - from above	\$ (564,100)
Change in personnel expense due to pension and OPEB accrual changes	(2,279)
Debt Principal Payments	170,000
Capital outlay that is capitalized	1,896,816
Loan Proceeds	(810,234)
Change in interest expense due to bond premium amortization and interest payable change	974
Equity Transfer related to debt	(15,631)
Depreciation Expense	(133,521)
Change in Net Position as Reported in Proprietary Funds Statement of Revenues, Expenditures, and Changes in Net Position	<u>\$ 542,025</u>

CITY OF COBURG
Schedule of Revenues, Expenditures,
and Changes in Fund Balance - Budget and Actual
SEWER FUND
For the Fiscal Year Ended June 30, 2023

	<u>Budgeted Amounts</u>		Actual Amounts (Budgetary Basis) (See Note 1)	Variance with Final Budget Over (Under)
	<u>Original</u>	<u>Final</u>		
<u>REVENUES:</u>				
Charges for Services	\$ 1,178,564	\$ 1,178,564	\$ 1,119,438	\$ (59,126)
Investment Revenue	3,362	3,362	36,146	32,784
Other Revenue	470,000	470,000	375,000	(95,000)
Total Revenues	1,651,926	1,651,926	1,530,584	(121,342)
<u>EXPENDITURES:</u>				
Sewer				
Personnel Services	208,883	208,883	208,883	-
Materials and Services	386,426	386,426	370,028	(16,398)
Capital Outlay	-	-	(1,800)	(1,800)
Sewer Capital				
Materials and Services	63,980	63,980	-	(63,980)
Capital Outlay	200,000	200,000	43,525	(156,475)
Sewer Debt Service				
Materials and Services	42,390	42,390	39,890	(2,500)
Debt Service:				
Principal	630,542	630,542	630,542	-
Interest	240,352	240,352	240,352	-
Contingency for Debt	200,000	200,000	-	(200,000)
Total Expenditures	1,972,573	1,972,573	1,531,420	(441,153)
Excess (Deficiency) of Revenues Over Expenditures	(320,647)	(320,647)	(836)	319,811
Net Change In Fund Balance	(320,647)	(320,647)	(836)	319,811
Fund Balance - July 1, 2022	2,164,000	2,164,000	2,175,725	11,725
Fund Balance - June 30, 2023	\$ 1,843,353	\$ 1,843,353	\$ 2,174,889	\$ 331,536

Reconciliation to generally accepted accounting principles basis

Net change in fund balance from above	\$ (836)
Change in Inventory	
Change in Accrued Interest	(7,195)
Change in Pension and Employee Benefit Expenses	(2,524)
Debt Principal Payments	630,542
Amortization of Bond Premium	23,762
Capital outlay that is capitalized	43,525
Equity transfer related to debt refinancing	56,308
Depreciation Expense	(549,453)
Change in Net Position as Reported in Combining Statement of Revenues, Expenses, and Changes in Net Position	<u>\$ 194,129</u>

OTHER INFORMATION

Additional Supporting Schedules

CITY OF COBURG
SCHEDULE OF LONG-TERM DEBT TRANSACTIONS
For the Fiscal Year Ended June 30, 2023

IFA Business Oregon #S19007 - In Drawdown

IFA Loan with Oregon Business Development Department loan #S19007 Safe Drinking Water Revolving Loan Fund for Water System Improvements in drawdown. Original balance \$6,530,000 with forgivable amount of \$780,000. Interest rate 1.00%. Dated December 27, 2018. As of June 30, 2021, the loan is in drawdown and therefore an amortization schedule has not been established. As of June 30, 2023 the forgivable loan balance is \$764,056 and the non-forgivable balance is \$1,340,206.

Current Year Activity:

	<u>Outstanding Balance July 1, 2022</u>	<u>New Issues and Interest Matured</u>	<u>Principal and Interest Retired</u>	<u>Outstanding Balance June 30, 2023</u>	<u>Due Within One Year</u>
Principal	\$ 1,294,028	\$ 810,234	\$ -	\$ 2,104,262	\$ -
Total	<u>\$ 1,294,028</u>	<u>\$ 810,234</u>	<u>\$ -</u>	<u>\$ 2,104,262</u>	<u>\$ -</u>

CITY OF COBURG
SCHEDULE OF LONG-TERM DEBT TRANSACTIONS
For the Fiscal Year Ended June 30, 2023

US Bank Global Corp. Trust Services - Sewer Portion

Full Faith & Credit Refunding Obligation Bonds, Series 2020 held by US Bank for refinancing and consolidation of debt. The amount of the bonds is \$6,565,000 and carries an interest rate between 3.0 and 4.0 %. Bonds are dated November 19, 2020. Liability and repayment of the debt is allocated between governmental activities, water activities, and sewer activities. This is the sewer activities portion. This portion will be fully retired in 2055.

Current Year Activity:

	Outstanding Balance July 1, 2022	New Issues and Interest Matured	Principal and Interest Retired	Outstanding Balance June 30, 2023	Due Within One Year
Principal	\$ 5,050,000	\$ -	\$ 90,000	\$ 4,960,000	\$ 95,000
Interest	-	172,900	172,900	-	170,200
Total	<u>\$ 5,050,000</u>	<u>\$ 172,900</u>	<u>\$ 262,900</u>	<u>\$ 4,960,000</u>	<u>\$ 265,200</u>

Future Requirements:

Fiscal Year Ended June 30,	Principal	Interest	Total	Interest Rate
2024	\$ 95,000	\$ 170,200	\$ 265,200	3.00%
2025	95,000	167,350	262,350	3.00%
2026	100,000	164,500	264,500	3.00%
2027	100,000	161,500	261,500	3.00%
2028	105,000	158,500	263,500	3.00%
2029	110,000	155,350	265,350	3.00%
2030	110,000	152,050	262,050	3.00%
2031	115,000	148,750	263,750	3.00%
2032	115,000	145,300	260,300	3.00%
2033	120,000	141,850	261,850	3.00%
2034	125,000	138,250	263,250	3.00%
2035	130,000	134,500	264,500	3.00%
2036	130,000	130,600	260,600	3.00%
2037	135,000	126,700	261,700	3.00%
2038	140,000	122,650	262,650	3.00%
2039	145,000	118,450	263,450	3.00%
2040	150,000	114,100	264,100	3.00%
2041	155,000	109,600	264,600	3.00%
2042	160,000	104,950	264,950	3.00%
2043	160,000	100,150	260,150	3.00%
2044	160,000	95,350	255,350	3.00%
2045	165,000	90,550	255,550	3.00%
2046	180,000	85,600	265,600	4.00%
2047	185,000	78,400	263,400	4.00%
2048	190,000	71,000	261,000	4.00%
2049	200,000	63,400	263,400	4.00%
2050	210,000	55,400	265,400	4.00%
2051	215,000	47,000	262,000	4.00%
2052	225,000	38,400	263,400	4.00%
2053	235,000	29,400	264,400	4.00%
2054	245,000	20,000	265,000	4.00%
2055	255,000	10,200	265,200	4.00%
Total	<u>\$ 4,960,000</u>	<u>\$ 3,450,000</u>	<u>\$ 8,410,000</u>	

CITY OF COBURG
SCHEDULE OF LONG-TERM DEBT TRANSACTIONS
For the Fiscal Year Ended June 30, 2023

DEQ #R23045 Refinance Note

Note payable to Department of Environmental Quality to refinance outstanding debt with DEQ. Note is dated December 1, 2020 for a total amount of \$8,805,123 and carries an interest rate of .86%. Principal and interest payments are due the first day of August and February until paid off with payment of February 1, 2036.

Current Year Activity:

	<u>Outstanding Balance July 1, 2022</u>	<u>New Issues and Interest Matured</u>	<u>Principal and Interest Retired</u>	<u>Outstanding Balance June 30, 2023</u>	<u>Due Within One Year</u>
Principal	\$ 7,978,065	\$ -	\$ 540,542	\$ 7,437,523	\$ 545,201
Interest	-	67,452	67,452	-	62,793
Total	<u>\$ 7,978,065</u>	<u>\$ 67,452</u>	<u>\$ 607,994</u>	<u>\$ 7,437,523</u>	<u>\$ 607,994</u>

Future Requirements:

	<u>Fiscal Year Ended June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>	<u>Interest Rate</u>
	2024	\$ 545,201	\$ 62,793	\$ 607,994	0.86%
	2025	549,900	58,094	607,994	0.86%
	2026	554,640	53,354	607,994	0.86%
	2027	559,420	48,574	607,994	0.86%
	2028	564,241	43,753	607,994	0.86%
	2029	569,103	38,891	607,994	0.86%
	2030	574,008	33,986	607,994	0.86%
	2031	578,956	29,038	607,994	0.86%
	2032	583,945	24,049	607,994	0.86%
	2033	588,978	19,018	607,996	0.86%
	2034	594,054	13,940	607,994	0.86%
	2035	599,174	8,820	607,994	0.86%
	2036	575,903	3,656	579,559	0.86%
Total		<u>\$ 7,437,523</u>	<u>\$ 437,966</u>	<u>\$ 7,875,489</u>	

CITY OF COBURG
SCHEDULE OF LONG-TERM DEBT TRANSACTIONS
For the Fiscal Year Ended June 30, 2023

US Bank Global Corp. Trust Services - Water Portion

Full Faith & Credit Refunding Obligation Bonds, Series 2020, held by US Bank for refinancing and consolidation of debt. The amount of the bonds is \$6,565,000 and carries an interest rate between 3.0 and 4.0 %. Bonds are dated November 19, 2020. Liability and repayment of the debt is allocated between governmental activities, water activities, and sewer activities. This is the water activities portion. This portion will be fully retired in 2026.

Current Year Activity:

	Outstanding Balance July 1, 2022	New Issues and Interest Matured	Principal and Interest Retired	Outstanding Balance June 30, 2023	Due Within One Year
Principal	\$ 405,000	\$ -	\$ 170,000	\$ 235,000	\$ 75,000
Interest	-	12,150	12,150	-	7,050
Total	<u>\$ 405,000</u>	<u>\$ 12,150</u>	<u>\$ 182,150</u>	<u>\$ 235,000</u>	<u>\$ 82,050</u>

Future Requirements:

	Fiscal Year Ended June 30,	Principal	Interest	Total	Interest Rate
	2024	\$ 75,000	\$ 7,050	\$ 82,050	3.00%
	2025	80,000	4,800	84,800	3.00%
	2026	80,000	2,400	82,400	3.00%
Total		<u>\$ 235,000</u>	<u>\$ 14,250</u>	<u>\$ 249,250</u>	

For the Fiscal Year Ended June 30, 2023

US Bank Global Corp. Trust Services - Govmntl. Portion

Full Faith & Credit Refunding Obligation Bonds, Series 2020, held by US Bank for refinancing and consolidation of debt. The amount of the bonds is \$6,565,000 and carries an interest rate between 3.0 and 4.0 %. Bonds are dated November 19, 2020. Liability and repayment of the debt is allocated between governmental activities, water activities, and sewer activities. This is the governmental activities portion. This portion will be fully retired in 2045.

Current Year Activity:

	Outstanding Balance July 1, 2022	New Issues and Interest Matured	Principal and Interest Retired	Outstanding Balance June 30, 2023	Due Within One Year
Principal	\$ 505,000	\$ -	\$ 15,000	\$ 490,000	\$ 15,000
Interest	-	15,149	15,149	-	14,700
Total	<u>\$ 505,000</u>	<u>\$ 15,149</u>	<u>\$ 30,149</u>	<u>\$ 490,000</u>	<u>\$ 29,700</u>

Future Requirements:

Fiscal Year Ended June 30,	Principal	Interest	Total	Interest Rate
2024	\$ 15,000	\$ 14,700	\$ 29,700	3.00%
2025	15,000	14,250	29,250	3.00%
2026	15,000	13,800	28,800	3.00%
2027	15,000	13,350	28,350	3.00%
2028	20,000	12,900	32,900	3.00%
2029	20,000	12,300	32,300	3.00%
2030	20,000	11,700	31,700	3.00%
2031	20,000	11,100	31,100	3.00%
2032	20,000	10,500	30,500	3.00%
2033	20,000	9,900	29,900	3.00%
2034	20,000	9,300	29,300	3.00%
2035	20,000	8,700	28,700	3.00%
2036	20,000	8,100	28,100	3.00%
2037	25,000	7,500	32,500	3.00%
2038	25,000	6,750	31,750	3.00%
2039	25,000	6,000	31,000	3.00%
2040	25,000	5,250	30,250	3.00%
2041	25,000	4,500	29,500	3.00%
2042	25,000	3,750	28,750	3.00%
2043	25,000	3,000	28,000	3.00%
2044	40,000	2,250	42,250	3.00%
2045	35,000	1,050	36,050	3.00%
Total	<u>\$ 490,000</u>	<u>\$ 190,650</u>	<u>\$ 680,650</u>	

REPORTS ON LEGAL
AND
REGULATORY REQUIREMENTS

CITY OF COBURG**INDEPENDENT AUDITOR'S REPORT**
REQUIRED BY OREGON STATE REGULATIONS**As of June 30, 2023**

To the Governing Body of the City of Coburg
Coburg, Oregon

We have audited the basic financial statements of the City of Coburg as of and for the year ended June 30, 2023 and have issued our report thereon dated March 22, 2024. We conducted our audit in accordance with auditing standards generally accepted in the United States of America.

Compliance

As part of obtaining reasonable assurance about whether the City of Coburg's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grants, including the provisions of Oregon Revised Statutes as specified in Oregon Administrative Rules 162-10-000 through 162-10-320 of the Minimum Standards for Audits of Oregon Municipal Corporations, noncompliance with which could have a direct and material effect on the determination of financial statements amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion.

We performed procedures to the extent we considered necessary to address the required comments and disclosures which included, but were not limited to the following:

- **Deposit of public funds with financial institutions (ORS Chapter 295).**
- **Indebtedness limitations, restrictions, and repayment.**
- **Budgets legally required (ORS Chapter 294).**
- **Insurance and fidelity bonds in force or required by law.**
- **Programs funded from outside sources.**
- **Highway revenues used for public highways and roads (ORS Chapters 294, 368 & 373).**
- **Authorized investment of surplus funds (ORS Chapter 294).**
- **Public contracts and purchasing (ORS Chapters 279A, 279B, 279C).**

In connection with our testing nothing came to our attention that caused us to believe the City was not in substantial compliance with certain provisions of laws, regulations, contracts, and grants, including the provisions of Oregon Revised Statutes as specified in Oregon Administrative Rules 162-10-000 through 162-10-320 of the Minimum Standards for Audits of Oregon Municipal Corporations.

OAR 162-10-0230 Internal Control

In planning and performing our audit, we considered the City's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the City internal control over financial reporting.

This report is intended solely for the information and use of the City Council and management of the City of Coburg and the Oregon Secretary of State and is not intended to be and should not be used by anyone other than these parties.



Steven L. Tuchscherer, CPA
Umpqua Valley Financial
Roseburg, Oregon
March 22, 2024