City *of* Tigard

# Tigard Special Meeting - Agenda

**TIGARD CITY CENTER DEVELOPMENT AGENCY, CITY COUNCIL & LOCAL CONTRACT REVIEW BOARD**

**MEETING DATE AND TIME:** April 2, 2013 - 6:30 p.m.

**MEETING LOCATION:** City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

PUBLIC NOTICE:

Times noted are estimated.

Assistive Listening Devices are available for persons with impaired hearing and should be scheduled for Council meetings by noon on the Monday prior to the Council meeting. Please call 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

Upon request, the City will also endeavor to arrange for the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and
- Qualified bilingual interpreters.

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. on the Thursday preceding the meeting by calling: 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

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SEE ATTACHED AGENDA

City *of* Tigard

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**MEETING DATE AND TIME:** April 2, 2013 - 6:30 p.m.

**MEETING LOCATION:** City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

## CITY CENTER DEVELOPMENT AGENCY MEETING 6:30 PM

A. Call to Order- City Council, Local Contract Review Board & City Center Development Agency

B. Roll Call

C. Pledge of Allegiance

D. Council Communications & Liaison Reports

E. Call to Council and Staff for Non-Agenda Items

- EXECUTIVE SESSION: The Tigard City Center Development Agency will go into Executive Session to discuss real property negotiations, under ORS 192.660(2) (e). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

1. RECEIVE URBAN RENEWAL PROJECTS UPDATE **6:50 p.m. estimated time**

2. DISCUSSION ON PROPOSED DOWNTOWN TIGARD ENVIRONMENTAL CLEAN-UP FUND PROGRAM **7:05 p.m. estimated time**

## SPECIAL CITY COUNCIL MEETING 7:30 PM

3. PROCLAMATION - ARBOR MONTH

4. CONSENT AGENDA: (Tigard City Council) These items are considered routine and may be enacted in one motion without separate discussion. Anyone may request that an item be removed by motion for discussion and separate action. **7:40 p.m. estimated time**
Motion to:

APPROVE RESOLUTION OF SUPPORT FOR APPLICATION FOR INTEGRATED PLANNING GRANT FROM OREGON BUSINESS DEVELOPMENT BROWNFIELDS PROGRAM

*Consent Agenda - Items Removed for Separate Discussion: Any items requested to be removed from the Consent Agenda for separate discussion will be considered immediately after the Council/City Center Development Agency has voted on those items which do not need discussion*

5. CONSIDER ADOPTING REVISIONS TO THE CITY'S PUBLIC CONTRACTING RULES - Legislative Public Hearing **7:45 p.m. estimated time**

6. RECEIVE BRIEFING ON A LOCAL AGENCY AGREEMENT WITH ODOT TO PARTIALLY FUND MAIN STREET PHASE I IMPROVEMENTS FROM PACIFIC HIGHWAY TO THE RAILROAD CORRIDOR **8:05 p.m. estimated time**

7. RECEIVE BRIEFING ON A LOCAL AGENCY AGREEMENT WITH ODOT TO PARTIALLY FUND MAIN STREET PHASE II IMPROVEMENTS FROM THE RAILROAD CORRIDOR TO SCOFFINS STREET **8:15 p.m. estimated time**

8. RECEIVE BRIEFING ON AN INTERGOVERNMENTAL AGREEMENT WITH WASHINGTON COUNTY FOR THE WALNUT STREET IMPROVEMENT PROJECT **8:25 p.m. estimated time**

9. COUNCIL LIAISON REPORTS **8:35 p.m. estimated time**

10. NON AGENDA ITEMS

- EXECUTIVE SESSION: The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

11. ADJOURNMENT **8:45 p.m. estimated time**

**AIS-1233** **1.**

**Special Meeting**

| | | | |
|---|---|---|---|
| **Meeting Date:** | 04/02/2013 | | |
| **Length (in minutes):** | 15 Minutes | | |
| **Agenda Title:** | Urban Renewal Project Updates | | |
| **Submitted By:** | Sean Farrelly, Community Development | | |
| **Item Type:** | Update, Discussion, Direct Staff | **Meeting Type:** | City Center Development Agency |
| **Public Hearing:** | No | **Publication Date:** | |

**Information**

**ISSUE**

Updates on current urban renewal projects, including Façade Improvement Program, Burnham Street parking lot, downtown events, and Pacific Highway undercrossing lighting.

**STAFF RECOMMENDATION / ACTION REQUEST**

The Board of the CCDA is requested to receive the updates, provide feedback, and ask questions on other urban renewal projects.

**KEY FACTS AND INFORMATION SUMMARY**

Burnham Street Parking Lot:
• Parking lot reconfigured to better accommodate circulation to private parking areas behind Main Street as the result of new business (Jeffrey Allen) plans to close existing driveway
• Bid awarded in March
• Construction to start in April
• Estimated completion in July

Façade Improvement Program: The program has received renewed interest in the new year. Five new applications for design assistance have been received since January 1, 2013:
• Jeffrey Allen Home and Garden (new business)
• Max's Fanno Creek Brew Pub
• Kepler's Upholstery
• Tigard Cleaners
• Symposium Coffee (new business)

Grant-awarded projects that are currently under construction:
• 12568 SW Main (Diamond project)
• Sherrie's Jewelry Box
• Rojas Market and Gifts
• Wei Li Acupuncture

Fanno Creek Trail Lighting of Pacific Highway Viaduct Undercrossing
Final design specifications are being produced. This project will provide special lighting where the Fanno Creek Trail crosses under the viaduct. The lighting will:
• Highlight the architectural features of the viaduct; be capable of provide for security
• Be capable of changing color scheme for holidays or other events
• Increase feeling of safety under the viaduct

Downtown Events

• The Tigard Area Chamber of Commerce was awarded contract to organize downtown events and market the business district.
• Contract starting in January 2013.
• Steering committee organized
• Three Third Friday Events held (7-10 businesses actively participating)
• 2nd Annual Street Fair scheduled for August 17, 2013.
• Steering committee working on logo to promote Downtown businesses

**OTHER ALTERNATIVES**

Not applicable

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

Council 2012 Goal 3: Downtown

City Center Urban Renewal Plan

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

October 2, 2012

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**AIS-1234** **2.**

**Special Meeting**

**Meeting Date:** 04/02/2013

**Length (in minutes):** 25 Minutes

**Agenda Title:** Proposed Downtown Tigard Environmental Clean-up Fund Program

**Submitted By:** Sean Farrelly, Community Development

| | | | |
|---|---|---|---|
| **Item Type:** | Update, Discussion, Direct Staff | **Meeting Type:** | City Center Development Agency |
| **Public Hearing:** | No | **Publication Date:** | |

**Information**

**ISSUE**

Proposed program to address the issue of potential environmental contamination in downtown Tigard.

**STAFF RECOMMENDATION / ACTION REQUEST**

The Board of the CCDA is requested to provide feedback on the proposed coordinated program to address the issue of potential environmental contamination in downtown Tigard.

**KEY FACTS AND INFORMATION SUMMARY**

A number of sites of interest in Downtown Tigard are either confirmed or suspected of environmental contamination. Some sites have had Phase I and Phase II Environmental Site Assessments commissioned. The Oregon Department of Environmental Quality (DEQ) Environmental Clean-Up database lists a number of sites in Downtown Tigard. Historic and present-day land uses in downtown make it likely that additional cases of environmental contamination will be discovered.

"Brownfields" are defined by Environmental Protection Agency as "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant." The presence of a brownfield adds to the challenges of redevelopment due to the costs of clean up and potential exposure to liability.

To address the issue in downtown, the City Center Development Agency's strategy will be to provide and coordinate resources to facilitate the redevelopment of properties that have (or are perceived to have) environmental contamination. Through an anticipated mix of urban renewal, state, and federal funds, the Agency will:

1) Pro-actively work to assess environmental contamination on publicly and privately owned property.
2) Raise substantial funds to subsidize clean-up
3) Seek partners to clean-up and redevelop or improve contaminated properties consistent with the Tigard Downtown Improvement Plan and City Center Urban Renewal Plan.

As a first step in this process, a grant application for $25,000 will be made to the Oregon Business Development Department Brownfields Redevelopment Program. (Council will be requested to approve a resolution in support of the application.) If the application is successful, the grant will be utilized to perform outreach to property owners, compile an inventory of properties with potential environmental issues, and do baseline assessments of them.

This background information will lay the groundwork for an application to be made in the fall of 2013 for more substantial grant funding from the EPA Brownfield Program. If EPA Grant funding is obtained, the Agency will have additional resources to engage property owners and developers on specific sites where potential environmental contamination is a barrier to redevelopment. The Agency will provide and/or coordinate resources for technical

assistance, assessment, and other activities to get properties "redevelopment-ready."

It should be noted that Federal grant funding for brownfields is highly competitive (and could be more so due to the effects of budget sequestration). However even without Federal funding, the Agency, with more limited resources from the state and urban renewal, can make headway on the issue through outreach and education to property owners.

## OTHER ALTERNATIVES

The Board of the CCDA can direct staff to pursue other strategies to address the issue of potential environmental contamination in downtown Tigard.

## COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

City Center Urban Renewal Plan

## DATES OF PREVIOUS COUNCIL CONSIDERATION

March 5, 2013

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**Fiscal Impact**

**Fiscal Information:**

$50,000 has been requested in the FY 2013-14 CCDA budget. Receipt of Federal or State grant funds will be coordinated with the Finance Department.

**AIS-1208** **3.**

**Special Meeting**

| | | | |
|---|---|---|---|
| **Meeting Date:** | 04/02/2013 | | |
| **Length (in minutes):** | 5 Minutes | | |
| **Agenda Title:** | Proclaim April as Arbor Month | | |
| **Prepared For:** | Joanne Bengtson | **Submitted By:** | Joanne Bengtson, City Management |
| **Item Type:** | Update, Discussion, Direct Staff | **Meeting Type:** | Proclamation |
| **Public Hearing:** | No | **Publication Date:** | |

**Information**

**ISSUE**

Should Mayor Cook proclaim Arbor Month in Tigard?

**STAFF RECOMMENDATION / ACTION REQUEST**

Issue the proclamation in support of citywide activitites dedicated to our urban forest.

**KEY FACTS AND INFORMATION SUMMARY**

**OTHER ALTERNATIVES**

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

The city celebrates Arbor Month each April and this proclamation was issued in April 2012.

**Attachments**

Arbor Month Proclamation

# Proclamation

City of Tigard

## ARBOR MONTH

**Whereas,** In 1872, Arbor Day, a special day set aside for the planting of trees, was first celebrated in Nebraska; and

**Whereas,** Tigard's urban forest is part of a larger ecology that spans from mountains to ocean and is integral to our region's environmental quality; and

**Whereas,** our urban forest includes a diversity of public and private trees that grace our streets, yards, parks and greenways, provide habitat for wildlife, soften hardscapes, clean the air, protect water resources, and ensure that everyone can experience natural beauty where we live, work, and recreate; and

**Whereas,** the City of Tigard recognizes that our urban forest is a necessity and is an integral part of the city's infrastructure; and

**Whereas,** we are committed to providing resources to maintain and enhance the urban forest; and

**Whereas,** people of all ages and backgrounds, including citizens, civic organizations, businesses, and government agencies, have formed partnerships to participate actively in the stewardship and caretaking of Tigard's urban forest.

**NOW THEREFORE BE IT RESOLVED** that I, John L. Cook, Mayor of the City of Tigard, Oregon, do hereby proclaim the entire month of April 2013 as,

## ARBOR MONTH

in Tigard, Oregon and encourage people throughout the city to become more involved with the planting and stewardship of the urban forest throughout the year of 2013.

Dated this _____ day of _____ , 2013

**IN WITNESS WHEREOF,** I have hereunto set my hand and caused the Seal of the City of Tigard to be affixed.

_____
John L. Cook, Mayor
City of Tigard

**Attest:**

_____
City Recorder

**AIS-1240** **4.**

**Special Meeting**

| | | | |
|---|---|---|---|
| **Meeting Date:** | 04/02/2013 | | |
| **Length (in minutes):** | Consent Item | | |
| **Agenda Title:** | Support Application for Integrated Planning Grant from Oregon Business Development Department Brownfields Program - Resolution | | |
| **Submitted By:** | Sean Farrelly, Community Development | | |
| **Item Type:** | Resolution | **Meeting Type:** | Consent Agenda |

**Public Hearing**
**Newspaper Legal Ad Required?:** No
**Public Hearing Publication Date in Newspaper:**

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**Information**

**ISSUE**

Shall the Council adopt a resolution supporting the submission of a grant application for an integrated planning grant from the Oregon Business Development Department Brownfields Program?

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends the Council adopt the resolution.

**KEY FACTS AND INFORMATION SUMMARY**

• Potential environmental contamination in downtown Tigard may be a barrier to redevelopment envisioned in the Tigard Downtown Improvement Plan.
• The Oregon Business Development Department Brownfields Program has an integrated planning grant available for cities to inventory and assess properties with potential environmental contamination. If successful, the grant will assist the city/ City Center Development Agency in obtaining the baseline information to determine options for Federal EPA assistance.
• A copy of the grant application is available upon request.

**OTHER ALTERNATIVES**

Should the Council choose not to adopt this resolution, the grant application would be withdrawn.

**COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS**

2012 Council Goal 3: Downtown

Tigard Downtown Improvement Plan

**DATES OF PREVIOUS CONSIDERATION**

This is the first time this issue has come before the Council.

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**Fiscal Impact**

| | |
|---|---|
| **Cost:** | $5,000 |
| **Budgeted (yes or no):** | Yes |
| **Where Budgeted (department/program):** | CCDA |

**Additional Fiscal Notes:**

$5,000 from the CCDA budget will be used to match the $25,000 grant.

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**Attachments**

Resolution 13

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# CITY OF TIGARD, OREGON
# TIGARD CITY COUNCIL
# RESOLUTION NO. 13-

A RESOLUTION SUPPORTING AN APPLICATION FOR AN INTEGRATED PLANNING GRANT FROM OREGON BUSINESS DEVELOPMENT DEPARTMENT BROWNFIELDS PROGRAM

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WHEREAS, the Oregon Business Development Department Brownfields Program has funds available to cities to inventory and assess potential environmentally contaminated properties; and

WHEREAS, potential environmental contamination in downtown Tigard may be a barrier to redevelopment envisioned in the Tigard Downtown Improvement Plan; and

WHEREAS, the grant will assist the city and the City Center Development Agency in developing a coordinated program to address this issue.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The Tigard City Council supports the submission of an application for an integrated planning grant from the Oregon Business Development Department Brownfields Program.

SECTION 2: This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2013.

_____
Mayor - City of Tigard

ATTEST:

_____
City Recorder - City of Tigard

**AIS-1188** **5.**

**Special Meeting**

| | | | |
|---|---|---|---|
| **Meeting Date:** | 04/02/2013 | | |
| **Length (in minutes):** | 20 Minutes | | |
| **Agenda Title:** | Approve Revisions to the Public Contracting Rules | | |
| **Prepared For:** | Joseph Barrett | | |
| **Submitted By:** | Joseph Barrett, Financial and Information Services | | |
| **Item Type:** | Motion Requested<br>Resolution | **Meeting Type:** | Local Contract Review Board |

**Public Hearing**
**Newspaper Legal Ad Required?:** No
**Public Hearing Publication Date in Newspaper:**

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**Information**

**ISSUE**

Shall the Local Contract Review Board adopt revisions to the city's Public Contracting Rules?

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends the Local Contract Review Board approve the resolution revising the city's Public Contracting Rules.

**KEY FACTS AND INFORMATION SUMMARY**

Tigard's current Public Contracting Rules (Rules) have been in place since late 2011. While these rules have kept the city largely in compliance with applicable State of Oregon public contracting and purchasing laws, statutes, and rules, the city does need to make one key revision to remain in compliance. Staff is also recommending a few minor revisions that, while not required by a law, statute, or rule, will help with streamlining the Rules to better serve the city's day-to-day activities. A matrix of the proposed revisions is attached for review.

Staff recommends the Local Contract Review Board (Board) approve the attached resolution establishing the revised Rules along with the attached supporting findings for exemptions so the city may have the revisions in place on May 15, 2013. In addition, the city's Contracting and Purchasing Manual (Manual), which is utilized by staff as a guide through the contracting and purchasing rules and processes, will be revised to reflect the changes to the Rules. Staff recommends the Board authorize and direct staff to make the necessary changes to the Manual.

**OTHER ALTERNATIVES**

Do not approve all, or some of, the revisions and leave the current Rules in place and the city will follow the Attorney General's Model Public Contracting Rules where the city's rules do not address an issue.

Do not approve the revisions; dissolve the current Rules, and direct the city to follow the Attorney General's Model Public Contracting Rules beginning June, 30, 2013.

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

n/a

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

The Local Contract Review Board approved the current Public Contracting Rules on September 13, 2011.

## Fiscal Impact

**Cost:**

**Budgeted (yes or no):**

**Where budgeted?:**

**Additional Fiscal Notes:**

There is no fiscal impact for this item.

## Attachments

2013 PCR Resolution

PCR Exemption Finding Exhibit A

2013 PCR Revisions Matrix

2013 PCR Draft with Revisions

**LOCAL CONTRACT REVIEW BOARD**
**CITY OF TIGARD, OREGON**

RESOLUTION NO. 13-

A RESOLUTION ADOPTING REVISED PUBLIC CONTRACTING RULES.

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WHEREAS, the City of Tigard has previously adopted and used rules applicable to public contracting, including rules covering procedure and rules governing exemptions; and

WHEREAS, any legislative changes to statutes applicable to public contracting have been incorporated into Tigard's rules in order to remain in compliance with the statutes; and

WHEREAS, the City Council determines that the revised draft rules better suit the needs of the City than the proposed Attorney General model rules; and

WHEREAS, the City of Tigard finds that there will be a future need for the City to enter into public contracts and that it is therefore appropriate for the City to adopt Public Contracting Rules, consistent with the state Public Contracting Code; and

WHEREAS, the City of Tigard's Purchasing and Contracting Manual will be revised to meet the requirements established under the revised Public Contracting Rules.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The City Council, as the Local Contract Review Board hereby adopts rules attached as Exhibit A pursuant to the authority granted the Board by Tigard Municipal Code Section 2.46. These rules shall apply to all contracting, purchasing, and disposing of surplus personal property by the City of Tigard.

SECTION 2: The Local Contract Review Board adopts the findings in support of exemptions attached as Exhibit A.

SECTION 3: The model rules adopted or to be adopted by the Attorney General do not apply to contracting for the City of Tigard.

SECTION 4: The City Council, acting as the Local Contract Review Board, hereby establishes a revised Purchasing and Contracts Manual reflecting the new Public Contracting Rules.

SECTION 5 This resolution takes effect immediately upon adoption and the rules adopted under Section 1 shall be effective as to contracts that have not been advertised or entered into as of May 15, 2013. However, the public contracting rules in existence prior to this resolution shall remain in effect as to any contract entered into prior to May 15, 2013 or for which an invitation to bid or request for proposal is or has been advertised prior to May 15, 2013.

PASSED: This _____ day of _____ 2013.

_____
Mayor - City of Tigard

ATTEST:

_____
City Recorder - City of Tigard

**EXHIBIT A**
**FINDINGS IN SUPPORT OF EXEMPTIONS TO COMPETITIVE BIDDING OR PROPOSALS**

The Local Contract Review Board of the City of Tigard adopts the following findings in support of exemptions to competitive bidding/proposal requirements.

**Contracts Under Certain Dollar Amounts**

1. The City incurs costs in awarding contracts under a formal competitive bidding or formal competitive proposal process.

2. While competitive bidding or competitive proposals can result in cost savings for large projects, the cost of the process can exceed the cost savings for smaller contracts.

3. State law creates exemptions for contracts under specified dollar amounts, and the City's exemption implements state law rather than creating a new or special exemption.

4. The rules require an informal competitive process (solicitation of quotes) in most situations, assuring competition. Even when a direct appointment is possible, the City cannot use a higher priced source if a lower priced source is known to be available. The rule against fragmentation of contracts prevents misuse of this exemption.

5. The requirement to obtain at least three quotes for intermediate contracts discourages favoritism by requiring the City to check with several sources.

6. It is unlikely that this exemption will encourage favoritism or diminish competition because it still provides for competition in most circumstances and requires the City to consider alternate sources.

7. The exemption will lead to cost savings by avoiding the cost of a formal process when that cost would outweigh any likely cost savings.

8. The exemption is in the public interest because it allows the City to reduce internal costs while controlling contract expenditures. This could not be achieved otherwise.

**Price Regulated Items**

9. If prices are regulated, a competitive process would not result in a lower-cost contract and the costs of the process would increase the City's overall costs.

10. Price-regulated items are typically available only from a single or limited number of sources, so exempting price-regulated items is unlikely to encourage favoritism.

11. The exemption is in the public interest because it results in cost savings for the City that could not be achieved without the exemption.

**Library Periodicals**

12. The purchase of most library periodicals is within the small contract dollar amount.

13. A substantial amount of market competition exists for periodicals, which results in competitive prices in the market.

14. The costs of a formal competitive process are greater that the amount of any likely savings from a competitive process.

15. The prohibition on use of higher priced sources when lower priced sources are known to be available discourages favoritism.

**Advertising Contracts**

16. Most entities that provide a forum for advertisers have set prices that cannot be negotiated.

17. The City has legal requirements for advertising public notices that can only be met by a small number of sources and all possible sources can be contacted without the need for an invitation to bid or request for proposals.

18. The correct advertising medium is important for the success of any advertising, so the specific medium needs to be selected based on considerations that are difficult to quantify. Therefore, selecting advertising media by bid is inappropriate and selecting by proposals may also result in a proliferation of proposals that do not meet the City's needs.

19. Advertising often must be placed on a short time schedule that does not permit the use of a formal competitive process.

20. The costs of a formal competitive process would likely be greater than the savings resulting from using that type of process to place advertising.

21. This exemption will not encourage favoritism because the City is still able to use informal processes to compare media and choose the best outcome for the City.

22. The exemption is in the public interest because it will result in cost savings to the City without encouraging favoritism and those purposes could not be met with existing rules.

**Equipment Maintenance Repair and Overhaul**

23. It is often impossible to determine the cost of equipment repair or overhaul without testing the equipment. It is not cost effective to have one contractor test the equipment and another perform the repairs.

24. Equipment repair often is needed to be performed without delay and in less time than a competitive process would take.

25. The only way to have a competitive process for equipment repair or overhaul, other than by

creating price agreements, would be to have a separate entity test the equipment to determine what is wrong with the equipment.

26. Without knowing the extent of repairs needed, competition is not possible because different entities could quote only their hourly rates, with no prediction as to the amount of time the repairs would take.

27. The exemption is unlikely to encourage favoritism because it is to be used only in rare occasions where the City does not have established price agreements, reached by a competitive process without favoritism.

28. This exemption serves the public interest by providing a simple process for obtaining equipment repair when needed.

29. The exemption for maintenance does not apply to routine or scheduled maintenance, unless there is only one entity capable of providing the service.

**Purchases Under Established Price Agreements**

30. Purchases under existing price agreements are unlikely to encourage favoritism or diminish competition because they are based on price agreements entered into after an open competitive process.

31. This exemption furthers the public interest by ensuring that price agreements will function properly and the same results would not be achievable if this exemption were not granted.

**Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt**

32. The exemption encourages competition and discourages favoritism by requiring an informal competitive process and requiring the City to use the least expensive source of those providing quotes.
33. The purchases under this exemption are likely to be at levels that qualify as small or intermediate contracts and the process is similar to the process required for intermediate contracts. The exemption is provided because over a period of time the total dollar amount of goods purchased from a single source may exceed the dollar maximum for intermediate contracts. The exemption is justified because each individual contract will be entered into on a competitive basis.

34. This exception is in the public interest because it allows the City to reduce costs while maintaining competition. The same result could not be achieved within existing rules because a costly formal process might otherwise be required.

**Investment Contracts**

35. Investment of City funds is closely regulated by state statutes.

36. Protecting the City's financial resources is in the public interest and awarding investment contracts to low bidders creates a risk of the security of the City's funds. The City needs to

have a relationship of trust with those

37. The exemption for investment contracts or contracts to borrow funds is not likely to restrict competition or encourage favoritism because the City will investigate a range of potential contractors to assure the security of the City's funds.

38. The exception is in the public interest because it protects the City's financial resources in a way that could not be achieved without the exception.

**Insurance Contracts**

39. This exception provides for a competitive process for appointing agents of record or obtaining specific insurance, although the process does not necessarily conform to the standard RFP or ITB process. The competitive nature of the process promotes competition and does not encourage favoritism. The public interest would not be served by reliance on other regulations because of the specific nature of insurance contracts.

**Employee Benefit Insurance**

40. The Public Contracting Code creates an exemption for employee benefits contracts and the City's regulations implement that exemption.

**Office Copier Purchases**

41. This exemption requires a comparison of products and prices and so is a competitive process.

42. The exception is not likely to discourage competition or encourage favoritism because it does require the City to compare and choose the best combination of goods and price. It also results in a cost savings by being a less costly process than a formal competitive bidding or proposal process.

43. The exemption is in the public interest because it allows the City to reduce procedural costs while maintaining competition, and other regulations do not provide the same combination of cost savings and competitive process.

**Sole Source Procurement**

44. In some cases, there is only one possible supplier of the goods or services needed by the City. If there is only one supplied, a competitive process would be both unnecessary and costly.

45. This exception does not discourage competition, it simply recognizes that in some situations competition does not exist and that having a competitive process would not result in competition. It also does not encourage favoritism because no one would be disfavored by choosing the only possible source. The regulation contains sufficient safeguards to assure that it will be used only when other sources are not available.

46. The exception is in the public interest because it results in cost savings that would not be possible if the exception did not exist.

**Contract Amendments (Including Change Orders and Extra Work)**

47. At times the City's needs change during the course of a contract and more goods, services, or work is needed to meet the City's needs. It would not be cost-effective to require a new contracting process for additional work closely related to an existing contract.

48. This exemption contains limitations to prevent abuse and to limit the extent of contract amendments. These limitations discourage favoritism by requiring a new competitive process for major amendments.

49. The exemption does not discourage competition because it applies only when the existing contract was awarded by a competitive process.

50. The exemption is in the public interest because it saves the cost of a competitive process to make minor amendments to an existing contract.

**Affirmative Action Contracts**

51. This exemption implements an exemption created by the Public Contracting Code.

**Purchases of Contract by Other Public Agencies**

52. Contracts by public agencies often allow other public agencies to make purchases on the same terms.

53. This exemption promotes competition and does not encourage favoritism because it may be used only if the original contract was awarded after a competitive process.

54. The exemption is in the public interest because it allows the City to take advantage of other competitive processes and avoid duplication of costly processes.

55. The exemption is in the public interest because it results in cost savings while maintaining competition. The same results could not be achieved without this exemption.

**Oil or Hazardous Material Removal**

56. This exemption is limited to situations in which the City must comply with a DEQ order. The exemption is needed to ensure compliance with environmental laws and protection of the environment in a timely manner and applies only if a competitive process cannot be completed in time to comply with the DEQ order.

57. The exception promotes competition by requiring the City to use an informal competitive process by obtaining informal solicitations or quotes from potential suppliers.

58. This exemption is in the public interest and the public interest in environmental cleanup

would not be served if this exemption were not adopted.

**Contracts With Qualified Non-Profit Agencies**

59. This exemption implements an exemption required by state law.

**Ammunition**

60. The City uses specialized ammunition, including special training ammunition. The ammunition meeting the City's requirements is often available only for short time periods, insufficient to allow a competitive process.

61. The general requirement to attempt to find the lowest price goods or services will ensure that the City does not add to the City's costs. Providing this exemption will give the City the flexibility to purchase ammunition when available and needed. Not providing this exemption could endanger public safety.

62. The public interest is served by this exemption because it allows the City to ensure that its police officers are adequately armed and trained.

**Public Improvement Contracts Involving Design or Construction Management**

63. This exemption allows a competitive proposal process to be used rather than a competitive bid process for public improvements under some circumstances.

64. The exemption promotes competition and discourages favoritism by requiring a competitive process.

65. The exemption recognizes that under some circumstances, the public interest is served by considering quality as well as cost in contracting for public improvements.

66. The use of the design/build and construction manager/general contractor types of contracts should result in cost savings to the City by allowing various means of controlling costs and coordinating design and construction to reduce costs.

67. The public interest is served by this exemption. The public interest would not be served by requiring competitive bidding on all public improvement contracts because doing so would limit the City's ability to use cost-saving techniques and would prevent the City from considering differences in quality among potential contractors when quality is a legitimate issue. Under the competitive bidding process, the City is required to award the contract to the lowest bidder, even if there is only a one cent difference in cost and a substantial difference in quality, providing that the low bidder meets minimum specifications.

**Software**

68. This exemption allows contracts for software to be let if a determination is made that little to no competition exists for the required software.

69. The exemption details the criteria that must be used in determining whether or not competition exists for the software.

70. The exemption is in public interest as it results in cost savings by eliminating the costs associated with the competitive process that would be unproductive as little to no competition exists for the required software.

**Telecommunication Services**

71. This exemption allows contracts for software to be let if a determination is made that little to no competition exists for the required service.

72. The exemption detail which factors the City may look at in determining whether or not completion exists.

73. The exemption is in public interest as it results in cost savings by eliminating the costs associated with the competitive process that would be unproductive as little to no competition exists for the required service.

**Emergencies**

74. In emergencies, the City is often required to take action in less time than it would take to complete a formal competitive process.

75. The exemption promotes competition and discourages favoritism by requiring the City to use an informal competitive process and by limiting the exemption to those contracts needed to avoid a substantial risk of loss, damage or interruption of services.

76. The exemption promotes the public interest by allowing the City to respond quickly to emergencies that threaten loss, damage or interruption of services. The public interest would not be served by requiring a formal competitive process to respond to an emergency.

**Temporary Employment Services**

77. This exemption allows contracts with temporary personnel services to be let without a competitive process if it is determined that the City receives a viable pool (at least three) of candidates from a single agency.

78. This exemption promotes competition at the temporary employee level rather that the agency level.

79. This exemption promotes the public interest by allowing to City to take the time to review and interview the best candidates from a temporary agency in a timely manner. The public's interest in competition is still met at the temporary employee level.

**Conclusion**

As to each of the exemptions provided in the City's public contracting rules:

80. It is unlikely that any of the exemptions will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts. It is unlikely that the rules as a whole, including all exemptions, will encourage favoritism in the awarding of public contracting or substantially diminish competition for public contracts.

81. The awarding of public contracts pursuant to any of the exemptions will result in substantial cost savings to the City. The exemptions have been prepared to allow less expensive selection processes to be used when a more expensive process would not result in sufficient contract cost reduction to justify a more expensive process.

82. For those provisions allowing public improvement contracts to be awarded by a means other than formal competitive sealed bids, the exemptions will result in cost savings by allowing the use of cost control measures throughout the development process.

83. Each exemption supports the public interest and each exemption is needed to provide a comprehensive approach to public contracting that would not be achieved if any of the exemptions were not provided.

# PUBLIC CONTRACTING RULES - STAFF RECOMMENDED UPDATES

| RULE – PCR PAGE | STAFF RECOMMENDATION | DETAILS / IMPACT OF REVISION |
|---|---|---|
| **Qualification Based Selection (QBS)**<br><br>**PCR PAGES – 71-75** | Staff recommends the City follow Oregon Administrative Rule (OAR) Division 48 with regards to Qualification Based Solicitations (QBS) for specific professional services. | The city needs to include the QBS process in its Public Contracting Rules as mandated by ORS 279. This was passed by the 2011 legislature and became effective in January 2012. The city was waiting for the Attorney General's public contracts manual to come out before taking action but the AG did not produce a revised public contracts manual this year. Thus, the city should initiate its own changes to come into compliance with the new selection process.<br><br>This revision will have a significant impact on how the city solicits for certain classes of professional services which include architects, engineers, transportation planners, photogrammetrists, and land survey services. The QBS process does not allow for price as criteria in the selection of a consultant… qualifications for the work are determining factor. After determining the most qualified consultant the city would then negotiate a price. If the parties could not come to acceptable terms, the city could open discussions with the second most qualified consultant.<br><br>Staff will also need to solicit for, and maintain, a qualified list of vendors to select from for intermediate level projects. This will limit those able to work on the project to those that are on the qualified list. |

| THRESHOLD | QBS LISTED SERVICES | OTHER PROFESSIONAL/ TRADE SERVICES |
|---|---|---|
| **$250k and over** | Qualification Based RFP – Can use Qualified List or open to all | Formal RFP |
| **Over $100k & Under $250k** | Limited Qualification Based RFP – Send to 5 or more on Qualified List | Formal RFP |
| **Over $20k to $100K** | **A.** Direct Appointment | 3 informal proposals/quotes |
| **$20k and under** | Direct Appointment | Direct Appointment |

# PUBLIC CONTRACTING RULES - STAFF RECOMMENDED UPDATES

| RULE – PCR PAGE | STAFF RECOMMENDATION | DETAILS / IMPACT OF REVISION |
|---|---|---|
| **Sustainable or "Green" Purchases**<br><br>**PCR PAGE - 79** | Staff recommends the LCRB include a clause that encourages the purchase of sustainable or "green" products or services whenever deemed financially or operationally feasible. | Inclusion of this clause will likely have an impact on the city's contracting and purchasing practices. Staff would be required to afford some diligence in ensuring good faith effort to utilize sustainable products. A rule like this would require defining terms such as "financially feasible" or "operationally feasible." Without such development, how this rule is implemented throughout the city would likely vary to a large degree. |
| **Exemption - Temporary Personnel Services**<br><br>**PCR Page - 18** | Staff recommends the LCRB include an exemption from the competitive process for contracts with temporary personnel agencies. | As the city is truly purchasing the services of the assigned temporary employee more than the temp service itself, it may help expedite the process by waiving the three quote requirement. Staff typically asks to review resumes from a temporary firm and conducts either phone or face-to-face interviews prior to final selection. This exemption would essentially view the candidates as the proposers rather than the temporary agency. |
| **Intergovern-mental Agreements (IGAs)**<br><br>**PCR PAGES – 79-80** | Staff recommends moving the IGAs (Section 100.00) out of the Public Contracting Rules and creating a separate policy, much like that for travel, to handle IGAs and similar agreements. | The purpose of including any of the revision in the PCRs is to help clarify the IGA process for staff. It is worth noting that IGAs are not considered true public contracts as there are political aspects to IGAs that are not part of the public interest protecting in public contracting. As such the possibility of obtaining procedures and rules for IGA (and other forms of agreements with public agencies) may be made outside of the Public Contracting Rules… similar to how the city's Travel Policy or the Property Acquisition Workbook were implemented.<br>• Should we be more definitive definition regarding if the City Manager (or designee) can sign for any IGA under the delegated signature authority (currently $100,000) as with other contracts.<br>• Should we include definitions that draw distinction between IGA, Memorandum of Understanding (MOU), and Cooperative Improvement Agreements (CIA) in the public contracting rules?<br>• Should the public contracting rules define a policy for MOUs and CIAs that is different that the IGA policy, specifically related to who approves each type of agreement? |

# PUBLIC CONTRACTING RULES - STAFF RECOMMENDED UPDATES

| RULE – PCR PAGE | STAFF RECOMMENDATION | DETAILS / IMPACT OF REVISION |
|---|---|---|
| **Amendments**<br><br>**PCR Pages – 10-11, 75** | Staff recommends the LCRB allow amendments to contracts up to the project's fiscal year budget rather than a firm percentage. | Raising the threshold in which contracts may be amended without LCRB approval could help gain efficiencies for staff. It would also reduce the amount of contract amendments that are brought before the LCRB. Authority to sign the amendment would be granted to the City Manager by the LCRB at the time of contract award. Example project's fiscal year budget = $1,000,000 with contract awarded for $700,000 could have $300,000 amendment. |
| **Surplus**<br><br>**PCR Pages – 64-67** | Staff recommends defining surplus as "per lot," same as a purchase, to ensure consistency throughout the Public Contracting Rules. | Certain areas of the current public contracting rules define as per item where others are silent. On the purchasing of good side, it is clearly defined "per lot." Staff recommends surplus follow the same definitions as a purchase. The inclusion of such a revision may have impact on the methods the city uses to dispose of various pieces of surplus property. |

# CITY OF TIGARD - LOCAL CONTRACT REVIEW BOARD
# PUBLIC CONTRACTING RULES

The following Public Contracting Rules (PCRs) have been adopted by the City Council acting as the Local Contract Review Board pursuant to the authority granted to the Board by Tigard Municipal Code Section 2.46. The rules apply to all contracting, purchasing, and disposing of personal property by the City of Tigard but do not apply to acquisition, sale or other transfer of real property.

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# PCR 10.000 - COMPETITIVE PROCESS REQUIRED, EXEMPTIONS

## 10.010 COMPETITIVE PROCESS, EXEMPTIONS AND DEFINITIONS

**A.** All public improvement contracts shall be based upon competitive bidding unless meeting an exception listed here within. All other public contracts shall be based upon competitive bidding or competitive proposals (collectively "formal competitive process"), except the following:

**1.** Contracts made with other public agencies are not subject to these rules, except to the extent that the rules explicitly allow certain transactions with other public agencies.

**2.** Contracts which are exclusively for personal services as determined by application of Public Contract Rule (PCR) 70.010. Such contracts may include incidental materials such as written reports, architectural or engineering renderings, and similar supplemental materials.

**3.** Grants and contracts evidencing acceptance of donations by the City.

**4.** Contracts for professional or expert witnesses or consultants relating to existing or potential litigation or other legal matters.

**5.** Transfers of real property or any interest in real property.

**6.** Energy savings performance contracts.

**7.** Contracts relating to bonds, certificates of participation, and similar debt repayment obligations, or to program loans, or to public investments.

**8.** Employee benefit plans.

**9.** Contracts specifically exempt under the following rules:

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10.110 Individual Exemptions
10.115 Class Exemptions
80.010 Emergency Contracts

**B.** As used in this Section:

**1.** "Board" means the City of Tigard Local Contract Review Board.

**2.** "City" or "The City" means Tigard, Oregon.

**3.** Competitive bidding" means a competitive sealed bid procedure for awarding contracts following the rules set forth in PCR 30.000.

**4.** "Competitive quotes" means the solicitation and receipt of offers by the City from competing vendors, The solicitation may be by advertisement or by the City initiating a request to vendors to make an offer. The solicitation and the offer may be written or oral.

**5.** "Invitation to Bid" means the solicitation of competitive bids in which price among those bidders meeting specifications will be the predominant award criterion.

**6.** "LCRB" means the City of Tigard Local Contract Review Board.

**7.** "Personal property" means everything subject to ownership which is not real property and has exchangeable value.

**8.** "Price Agreement" means an agreement in which the vendor agrees to supply all goods or services of a particular type ordered by the City within a specified time period at a specified price and on terms specified in the price agreement.

**9.** "Public agency" means any federal, state or local government, or any department of any federal, state or local government, including any local school or education City or any special district.

**10.** "Request for Proposal" means the formal solicitation of competitive written proposals to be used as a basis for making an acquisition or entering into contract when price will not be the predominant award criterion, following the rules set forth in Section 30.010 to 30.205.

**11.** "Service" means work performed to meet a demand, especially work that is not connected with manufacturing a product.

**12.** "Service contract" means a contract that calls primarily for a contractor's time and effort rather than an end product.

**13.** "Telecommunications Services" means the lease or rental of the use of voice and data transmission facilities or services, or of central office services, but does not include acquisition of switch or station equipment or acquisition or installation of wire and cable.

**C.** When a contract is exempt from a formal competitive process, the City shall use reasonable efforts to ensure it is obtaining goods or services on the best terms (price, quality and other terms). Those efforts shall normally include seeking out potential contractors and determining price and availability by use of informal quotes or other similar methods. The City shall not knowingly purchase goods or services if it knows that comparable goods or services are available at lower cost on otherwise similar terms.

## 10.015 EXEMPTION OF CONTRACTS UNDER CERTAIN DOLLAR AMOUNTS

**A.** Public Contracts Other Than Public Improvements Contracts

The City may, in its discretion, enter into public contracts other than public improvements contracts without a formal competitive process if the value of the contract does not exceed $100,000. If this exemption is applied, the City must use either the small contract or intermediate contract procedures set forth in Subsections C and D of this section. This exemption does not authorize City employees or officials to enter into an agreement in excess of their dollar authority to bind the City.

**B.** Public Improvements Contracts

The City may, in its discretion, enter into public improvement contracts without competitive bidding if the value of the contract does not exceed $100,000. If this exemption is applied, the City must use either the small contract or intermediate contract procedures set forth in Subsections C and D of this section. This exemption does not authorize City employees or officials to enter into an agreement in excess of their dollar authority to bind the City.

**C.** Small Contract Procedures

When the amount of the contract does not exceed $10,000, the City may award the contract from any source known to the City to provide goods or services of acceptable quality at competitive prices. The City may not knowingly use a more expensive source if the goods or services of equivalent quality are readily available from alternate sources on the same terms at lower prices.

**D.** Intermediate Contract Procedures

When the amount of the contract does not exceed $100,000, but is more than $10,000, the City may award the contract after seeking at least three competitive quotes or proposals. The City shall keep a written record of the source and amount of the quotes or proposals received. If three suppliers are not available, a lesser number of actual quotes or proposals will suffice provided that a written record is made of the good faith effort to obtain the quotes or proposals.

**E.** No Division or Fragmentation of Contracts

A procurement of goods and/or services may not be artificially divided or fragmented to allow use of the small or intermediate contract procedures unless an exception or exemption is granted under these Rules.

**F.** Amendment of Small and Intermediate Contracts

A contract awarded under the small or intermediate contract procedures may not be amendment if the amendment would result in a total contract price that exceeds the maximum amount for the procedure used to award the original contract.

## 10.020 CONTRACTS FOR PRICE REGULATED ITEMS

The City may, without formal competitive process, contract for the purchase of the goods or services where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

## 10.025 LIBRARY PERIODICALS

Purchases for the library of subscriptions for periodicals including journals, magazines, and similar publications may be made without formal competitive process. However, this provision does not authorize the use of a higher priced source if a lower price source of acceptable quality is known to be available.

## 10.030 ADVERTISING CONTRACTS

The City may purchase advertising without formal competitive process.

## 10.035 EQUIPMENT MAINTENANCE, REPAIR, AND OVERHAUL

Contracts for equipment maintenance, repair, or overhaul may be let without a formal competitive process, subject to the following conditions:

**A.** The services and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

**B.** The services and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source.

The City should, where possible, use a price agreement rather than relying on this exception.

## 10.040 PURCHASES UNDER ESTABLISHED PRICE AGREEMENTS

When the price of goods and services has been established by a price agreement entered into by a competitive process, the City may purchase goods and services from the supplier without a subsequent competitive process for the duration of the price agreement.

## 10.045 GASOLINE, DIESEL FUEL, HEATING OIL, LUBRICANTS AND ASPHALT

The City may, without a competitive process, purchase gasoline, heating oil, lubricants, and asphalt subject to the following:

**A.** Prior to selection of the contractor, the City gets quotes from at least three vendors in the area;

**B.** The City makes its purchase from the least expensive source of those providing quotes; and

**C.** The City retains written justification for the purchase made.

## 10.050 INVESTMENT CONTRACTS

The City may, without a formal competitive process, contract for the purpose of the investment of public funds or the borrowing of funds by the City when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter, or constitution.

## 10.055 INSURANCE CONTRACTS

Contracts for insurance where either the annual or aggregate premium exceeds $5,000 must be let by a formal competitive process or by one of the following procedures:

**A.** Agent of Record

The City 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. Proposals for coverage are presented to the City Manager or designee for approval:

**1.** Prior to the selection of an agent of record, the City shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such selection. These efforts shall include a public advertisement in at least one newspaper of general circulation in the area. The advertisement shall generally describe the nature of the insurance that the City will require. if the amount of the annual premium for insurance other than employee benefits insurance is likely to exceed $10,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state.

**2.** An agent's appointment shall not exceed a period of 5 years, but the same agent(s) may be selected in a subsequent period. Agents must qualify the appointments prior to each period as if each appointment period were the first.

**3.** In selecting an agent of record, the City shall select the agent(s) most likely to perform the most cost effective services at a level of competence acceptable to the City.

**B.** Specific Proposals for Insurance Contracts

The City may solicit proposals from licensed insurance agents for the purpose of acquiring specific insurance contracts subject to the following conditions:

**1.** The City shall make reasonable efforts to inform known insurance agents in the competitive market area of the subject matter of the contract and to solicit proposals for providing the

services required in connection with that contract. Such efforts shall include public advertisements in at least one newspaper of general circulation in the area. If the amount of annual premium for insurance other than employee benefits insurance is likely to exceed $10,000 per year, such notice shall also include a public investment in at least one insurance trade publication of general circulation in the state.

**2.** The City shall select an agent on the basis of the most competitive offer considering coverage, premium cost, and service to be provided.

## 10.060 EMPLOYEE BENEFIT INSURANCE

The City may purchase employee benefit insurance without formal competitive process.

## 10.065 OFFICE COPIER PURCHASES

**A.** The City may enter into contracts for the purchase or lease of photocopiers without formal competitive process.

**B.** In exercising this exemption, the City shall consider the operating capabilities, limitations, and cost of each brand or model as well as cost and select the brand and vendor that will produce the best combination of performance and cost per copy for each application.

## 10.070 SOLE-SOURCE PROCUREMENT

The City may purchase without a formal competitive process if there is only one seller (sole seller) of a product or service of the quality required, or if the efficient utilization of existing equipment or supplies requires specification of a compatible product for which there is only one seller.~~,~~ The determination of a sole source must be based on written findings as required by ORS 279B.075. A sole source contract may be awarded only after approval of the findings by the City Manager, Assistant City Manager, or designee. To the extent reasonably practical, the City shall negotiate with single sellers to obtain the best possible contract terms for the City.

## 10.075 CONTRACT AMENDMENTS (INCLUDING CHANGE ORDERS AND EXTRA WORK)

A contract amendment for additional work, including change orders, extra work, field orders, or other change in the original specifications which increases the original contract price, may be made with the contractor without a formal competitive process subject to the following conditions:

**A.** The original contract was let by formal competitive process, and the contract documents included unit prices or bid alternates were provided that provide a basis for determining the cost for additional work, and a binding obligation exists on the parties covering the terms and conditions of the additional work; or

**B.** The amount of the aggregate cost increase resulting from all amendments does not exceed ~~25% of the initial contract~~the project budget for the current fiscal year. Amendments made pursuant to Section A of this rule are not included in computing the aggregate amount under this section. The LCRB may, at its sole discretion, approve amendments exceeding the ~~25% aggregate total~~

project budget for the current fiscal year if the Board finds it to be in the public's best interest to do so.

## 10.080 AFFIRMATIVE ACTION CONTRACTS

**A.** Public contracts may be awarded without a formal competitive process pursuant to a specific Affirmative Action plan. Affirmative Action is a program designed to insure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age, or physical or mental handicap, including but not limited to, personnel practices of contractors, "set-aside" programs, and minority business enterprises. These rules shall not be construed to prohibit engaging in practices designed to promote affirmative action goals and policies.

**B.** In carrying out the affirmative action policy, by appropriate ordinance, resolution or administrative rule, the City may limit competitive bidding on a public contract for procurement of goods and services or on any public contract estimated to cost $100,000 or less to contracting entities owned or controlled by persons described in Subsection A of this section.

## 10.085 PURCHASES OFF CONTRACTS BY OTHER PUBLIC AGENCIES

**A.** The City may purchase any good or service without a formal competitive process if the good or service is purchased from a bidder that has been awarded a contract for the same good or service, whether by a requirements contract or by individual contract by another public agency through its public contract purchasing procedures if:

**1.** The original contract was awarded by a competitive bid or proposal process or pursuant to an exemption equivalent to an exemption provided by these rules.

**2.** The contract allows other public agency usage of the contract. A contract that does not prohibit other public agency usage of the contract shall be deemed to allow other public agency use, unless the agency that awarded the contract objects to the use.

**3.** The purchase is on the same terms, or terms which are no less favorable to the City in all material respects, as the contract awarded by the public agency.

**B.** A purchase under the Oregon Cooperative Purchasing Program or any similar federal or regional program, including the Electronic Government Act of 2002 (10 U SC 381) shall be considered an exempt purchase under this exemption.

## 10.090 OIL OR HAZARDOUS MATERIAL REMOVAL

**A.** The City may enter into public contracts without a formal competitive process when ordered to clean up oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS Chapter 466, especially ORS 466.605 through 466.680, and this 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 has created an emergency condition. in exercising its authority under this exemption, the City shall:

1. 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.

2. Make written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup.

3. Record the measures taken under Subsection 1 of this section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selection the contractor selected.

**B.** The City shall not contract pursuant to this exemption in the absence of an order from DEQ to clean up a site with a time limitation that would not permit hiring a contractor under the usual formal competitive process procedures.

## 10.095 CONTRACTS WITH QUALIFIED REHABILITATIVE FACILITIES

The City may enter into contracts with qualified rehabilitative facilities providing employment for disabled individuals under ORS 279.835 to 279.855 without a competitive process. The City shall contract with such agencies when required by law. To the extent competition exists among qualified non-profit agencies, the City shall select the qualified non-profit agency offering the lowest price for an acceptable level of service.

## 10.100 AMMUNITION

The City may enter into contracts for the purchase of lethal and non-lethal ammunition, both for service and for training, without a formal competitive process.

## 10.105 PUBLIC IMPROVEMENT CONTRACTS INVOLVING DESIGN OR CONSTRUCTION MANAGEMENT

The City may enter into public improvement contracts without competitive bidding if the contracts involve design or construction management or require expertise beyond normal construction work. Unless exempt under some other exemption, a competitive proposal process must be used. One of the following specific processes shall be followed:

**A.** <u>Construction Manager/General Contractor</u>

The City may select a person or firm to act as a Construction Manager/General Contractor (CM/GC) to construct public improvements by means of a competitive proposal process.

1. A CM/GC performs specified Construction Manager services in addition to traditional General Contractor services. A CM/GC contract shall require full performance within a negotiated Guaranteed Maximum Price (GMP). The basis for payment shall be reimbursable direct costs plus a fee constituting full payment for work and services rendered, which together shall not exceed the GMP.

**2.** The solicitation documents shall include:

a. A description of the evaluation process and criteria. The criteria may include cost, quality, experience, availability, commitment to timely completion, and other factors.

b. The process to be followed for establishing the guaranteed maximum price.

c. A description of the circumstances under which any of the following activities may be authorized and undertaken for compensation prior to establishing the GMP, but only after unit prices are established:

1) Early procurement of materials and supplies;

2) Early release of bid packages for such things as site development; and

3) Other advance work related to critical components of the project.

**3.** The contract documents shall include:

a. A description of the method by which the CM/GC shall competitively select contractors and subcontractors.

b. Either the maximum guaranteed price or a process for establishing a guaranteed maximum price.

c. A description of the situations in which the CM/GC may perform the work of the improvement without subcontracting, including any requirement that the CM/GC compete with others to do the work and the work that the CM/GC may perform directly without a competitive process.

d. The standards or factors under which changes or additional work that warrants an increase in the GMP, as well as criteria for decreasing the GMP. The GMP shall not be increased without a concomitant increase to the scope of the GMP.

e. The disposition of any cost savings resulting from completion of the work below the GMP, including the CM/GC share, if any, in those cost savings. Normally, the cost savings should accrue to the City.

f. The items or categories of items are eligible for cost reimbursement within the GMP.

g. A provision for a final audit adjustment and process.

h. A fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. Costs determined to be included within the fee should be expressly defined wherever possible. The fee, first expressed as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the selection process. It shall subsequently be expressed as a fixed amount when the GMP is established.

i. Any economic incentives, the specific criteria that apply and their relationship to other financial elements of the Contract (including the GMP).

**B.** Design-Build Contracts

1. A design-build contract is one in which a single entity designs and constructs a public improvement. Design-build contracts shall only be used if City staff has the expertise and experience to administer a design-build contract. The design-build process may be used to:

   a. Obtain 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. Integrate 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. Reduce 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. Shorten 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. Obtain 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. A design-build contractor must have an Oregon licensed design professional(s) on staff that will be assigned to the City's project. The design-build contractor must disclose in its proposal the name of the Oregon licensed design professional(s) and verify that the professional(s) will be the one(s) providing primary design services to the City.

3. A design-build contractor awarded a contract shall provide additional security as required by ORS 279C.380(1)(a). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

4. The level or type of design services required must be clearly defined within the solicitation documents and contract, along with a description of the level or type of any design services previously performed for the project. The services to be performed shall be clearly delineated as either design specifications or performance standards.

5. The contract shall clearly identify the liability of design professionals, shall include requirements for professional liability insurance, and shall clearly identify the extent of any indemnity or warranty.

**C.** Other Public Improvement Contracts Where Quality is an Issue

In many situations, including those projects that require a higher than normal level of expertise or skill, quality of the final product may be important beyond meeting minimum specifications. In those situations, the City may use a request for proposal process, provided that the cost factor constitutes at least 75% percent of the total evaluation score. In scoring the cost factor, the proposer submitting the lowest cost amount shall receive the maximum possible score for the cost factor, and the scores of the other proposers shall be reduced by the percentage by which their cost exceeded the lowest cost. For example, if the maximum score for the cost factor is 80, the lowest cost proposer would get a score of 80. A proposer with a cost that is 10 percent higher would have the score reduced by 10 percent (8 points), to 72.

## 10.110 INDIVIDUAL EXEMPTIONS

**A.** The City may exempt a particular contract or contracts from formal competitive process requirements which are not otherwise exempted under these rules. Staff shall prepare an informational packet for the Board when requesting the declaration of an individual exemption that contains the following details:

1. The nature and scope of the project or purchase;

2. Estimated cost of the project or purchase;

3. A narrative description of the cost savings anticipated by the exemption from the formal competitive process and the reasons the formal competitive process would be inappropriate;

4. Proposed alternative contracting and purchasing practices to be employed; and

5. The estimated date by which it would be necessary to let the contract.

**B.** The Board may require such additional information as it deems necessary to determine whether a specific contract is to be exempt from the formal competitive process.

**C.** The Board shall hold a public hearing and adopt findings justifying the individual exemption. The findings shall at a minimum address include the findings required by ORS 279B.085(3) for contracts other than public improvements or ORS 279C.335 for public improvement contracts.

**D.** Notification of the public hearing shall be published in a newspaper of general circulation in the City a minimum of 14 days prior to the hearing. Notification shall be published in a trade newspaper of general circulation in the state if required by the Public Contracting Code.

**E.** The notice shall state that the public hearing is for the purpose of taking comments on the City's draft findings for an exemption from the formal competitive process requirement. At the time of the notice, copies of the draft findings shall be made available to the public. At the option of the City, the notice may describe the process by which the findings are finally adopted and may indicate the opportunity for any further public comment.

**F.** At the public hearing, the City shall offer an opportunity for any interested party to appear and present comment.

**G.** If the City is required to act promptly due to circumstances beyond its control that do not constitute an emergency, notification of the public hearing can be published simultaneously with the City's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.

## 10.115 CLASS EXEMPTIONS

**A.** The Board may exempt certain public contracts or classes of public contracts from the formal competitive process requirements by amending these rules upon approval of the following findings:

1. It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts;

2. The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the City. In making such findings, the Board may consider the type, cost, amount of the contract, number of persons available to bid, and such other factors as may be deemed appropriate; and

3. The exemption otherwise substantially supports the public interest in a way that could not be achieved under existing rules.

**B.** The Board shall adopt a class exemption only after a duly noticed public hearing. The notice of the hearing shall be posted in full public view in the City Hall and published in a newspaper of general circulation at least 14 days prior to the hearing. If the exemption involves a public improvement, the notice shall also be published in a trade publication of statewide circulation.

## 10.120 JUSTIFICATION OF PUBLIC IMPROVEMENT CONTRACTS AWARDED OTHER THAN BY COMPETITIVE BIDDING

Upon completion of and final payment for any public improvement contract in excess of $100,000 for which the City did not use the competitive bidding process, the City shall prepare and deliver to the Local Contract Review Board an evaluation of the public improvement project. The evaluation shall include but not be limited to:

**A.** The actual project cost as compared with original project estimates.

**B.** The amount of any guaranteed maximum price.

**C.** The number of project change orders issued.

**D.** A narrative description of successes and failures during the design, engineering and construction of the project.

**E.** An objective assessment of the use of the alternative contracting process as compared to the findings required by ORS 279C.335.

Evaluations required by this section shall be made available for public inspection and shall be completed within 30 days of acceptance of the project.

## 10.125 SOFTWARE

The City may award a contract for software without a formal competitive process if it is determined that little to no competition exists for the required software. In determining whether or not competition exists, the City may consider the following factors;

**A.** The extent to which software is able to be integrated with City systems including both hardware and software.

**B.** The stability of the software company, which shall include:

**1.** The software's track record in the industry;

**2.** The software's companies financial standing; and

**3.** The frequency of upgrades that enhance the software.

**C.** The overall cost of the software, which shall include the City's internal costs of upkeep on the software.

Contracts for annual software maintenance may also extend past the standard five (5) year maximum contract terms detailed in these rules so long as maintaining the software continues to be in the City's best interest.

## 10.130 TELECOMMUNICATION SERVICES

The City may award a contract for telecommunications services without a formal competitive process if it determines that no competition exists among services suppliers. In determining whether competition exists, the City may consider the following factors:

**A.** The extent to which alternative providers exist in the relevant geographic and service market. The relevant market will vary from service category to service category and cannot be predetermined in advance.

**B.** The extent to which alternative services offered are comparable or substitutable in technology, service provided, and performance. For example, if the City's requirement is for digital services, analog services are not comparable or substitutable.

**C.** The extent to which alternative providers can respond to the City's interests in consistency and continuity of services throughout its service area, volume discounts, and centralized management. The City must document for the record its findings on these factors or any other factors used in determining whether competition exists. In developing its findings, the City may solicit information by any means, including informal discussions or correspondence or through a formal Request for Information.

## 10.135 DEVELOPER PROVISION OF PUBLIC IMPROVEMENTS

At times, private developers may provide work on public improvements for the City as required by a condition of land use approval or to comply with a land use approval or as required by a development agreement with the City. The developer in those circumstances is conclusively deemed to be a sole source for the provision of the public improvements, without the need for findings. No competitive process is required to enter into a development agreement that includes the provision of public services by a developer or for a developer to provide and the City to accept public improvements as required by a condition of approval.

There are also times when the City may contract with a developer to provide services on a public improvement due to the developers work in the area even through the work may not be a condition of land use. In these circumstances, the City must provide determination that there will be significant savings to the City to contract with the developer. This determination must be made in writing and made part of the project's permanent file. In these cases the developer shall conclusively deemed to be a sole source for the provision of the public improvement. No competitive process is required to enter into a public improvement contract for the developer to provide services on the public improvements if the savings are determined to be significant enough to warrant such an exemption.

## 10.140 TEMPORARY PERSONNEL SERVICES

The City may enter into contracts for the purchase of temporary personnel services without a formal competitive process. Whenever possible, the City shall request that staffing agencies submit multiple resumes of potential candidates for the requesting division or department to review prior to hiring the service.

# PCR 15.000 - PRICE AGREEMENTS

## 15.010 PRICE AGREEMENTS

The City may enter into price agreements providing the following conditions are met:

**A.** The contract is awarded by a formal competitive process.

**B.** The term of the contract including renewals does not exceed 5 years.

## 15.015 MULTIPLE PRICE AGREEMENTS PERMITTED

The City may enter into price agreements with more than one supplier for the same goods or services.

# PCR 20.000 - BRAND NAMES OR MARKS

## 20.010 SPECIFICATION OF PARTICULAR BRAND NAMES OR PRODUCTS

**A.** Specifications for public contracts shall not expressly or implicitly require any product of any particular manufacturer or seller except pursuant to an exemption under PCR 20.015

(Copyrighted Materials), 20.020 (Single Manufacturer or Compatible Products), 20.025 (Product Pre-qualification), or 20.030 (Brand Name or Mark Exemption Applications).

**B.** If there is no other practical method of specification, the City may designate a particular brand name, make or product "or equal", but this practice should be avoided whenever possible.

## 20.015 COPYRIGHTED MATERIALS

The City may specify a specific copyrighted product. This exemption does not include patented or trade mark goods.

## 20.020 SINGLE MANUFACTURER OR COMPATIBLE PRODUCTS

**A.** If there is only one manufacturer or seller of a product of the quality required, or if the required product is data processing equipment which will be used for research where there are requirements for exchange of software and data with other research establishments, or if the efficient utilization of the existing equipment or supplies requires a compatible product of a particular manufacturer or seller, the City may specify such particular product subject to the following conditions:

1. The product is selected on the basis of the most competitive offer considering quality and cost. The term "cost" includes not only the product price, but also other items of expense such as costs related to quality of conversion.

2. Prior to awarding the contract, the City has made reasonable effort to notify known vendors of competing or comparable products of the intended specifications and invited such vendors to submit competing proposals.

3. If the purchase does not exceed $50,000, such notice and invitation may be informal.

4. If the amount of the purchase exceeds $50,000, such notice shall include advertisement in at least one newspaper of general circulation in the area where the contract is to be performed and shall be timely to allow competing vendors a reasonable opportunity to make proposals.

**B.** If the amount of the purchase exceeds $50,000, the City shall document its actions in the bid file. Such documentation shall include:

**1.** A brief description of the proposed contract or contracts.

**2.** A detailed description of the reasons why the product and/or seller was selected and any competing products and/or sellers that were rejected. The description shall also include the efforts taken by the City to notify and invite proposals from competing vendors.

**C.** If the City intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed 2 years, it may so state in the documentation required by subsection (1)(b) and (2) of this rule, and such documentation shall be sufficient notice as to subsequent purchases.

## 20.025 PRODUCT PRE-QUALIFICATION

**A.** When it is impractical to create specific design or performance specification for a type of product to be purchased, the City may specify a list of approved products by reference to particular manufacturers or sellers according to the following product pre-qualification procedure:

**1.** The City has made reasonable efforts to notify known manufacturers or vendors of competitive products of its intention to accept applications for inclusion in its list of pre-qualified products. Notification shall include advertisement in a trade journal of statewide distribution when possible. In lieu of advertising, the City may notify vendors and manufacturers appearing on the appropriate list maintained by the Oregon Department of Transportation (ODOT) Qualified Products List or any list produced and maintained by the Oregon Department of General Services.

**2.** The City permits application for pre-qualification of similar products up to 15 days prior to advertisement for bids on the product.

**B.** If an application for inclusion in a list of pre-qualified products is denied, or an existing pre-qualification revoked, the City shall notify the applicant in writing. The applicant may appeal to the Board for a review of the denial or revocation in the same manner as an appeal of disqualification or denial provided in PCR 30.150.

## 20.030 BRAND NAME OR MARK EXEMPTION

**A.** The City may apply for and receive a brand name or mark exemption ruling from the Board for current and contemplated future purchases. Applications shall contain the following information:

**1.** A brief description of the contract or contracts to be covered. The description should include contemplated future purchases.

**2.** The brand name, mark or product to be specified.

**3.** The reasons the City is seeking the exemption.

**B.** The Board may grant brand name or mark exemptions only if either of the following conditions are met:

**1.** The exemption is not likely to encourage favoritism in public contracts or substantially diminish competition and will result in cost savings.

**2.** There is only one manufacturer or seller of the product of the quality required, or efficient utilization of existing equipment or supplies requires acquisition of compatible equipment or supplies.

# PCR 25.000 — MINORITY OWNED BUSINESSES, WOMAN OWNED BUSINESSES, AND EMERGING SMALL BUSINESSES

## 25.010 MINORITY OWNED BUSINESSES, WOMAN OWNED BUSINESSES, AND EMERGING SMALL BUSINESSES

It is the policy of the City to provide opportunities for available contracts to certified minority owned, woman owned and emerging small business and to cooperate with the State or Oregon Advocate for Minority, Women and Emerging Small Business to determine the best means by which to make such opportunities available.

## 25.015 AUTHORITY TO REQUIRE SUBCONTRACTING WITH CERTIFIED MINORITY OWNED BUSINESSES, WOMAN OWNED BUSINESSES, AND EMERGING SMALL BUSINESSES

The City may, in solicitation documents, require that some portion of the work to be performed or some portion of the materials to be provided be provided by a certified emerging small business and establish other requirements authorized by ORS 279A.105.

# PCR 30.000 - FORMAL COMPETITIVE PROCESSES

## 30.010 DEFINITIONS

For purposes of this chapter, the following definitions apply:

**A.** "Addenda to the Bid Documents" means additions or changes to the bid documents defined as addenda shall be labeled as such and distributed according to these rules.

**B.** "Bid" means an offer submitted in response to an invitation to bid.

**C.** "Bid Closing" means the date and time announced as the deadline for the receipt of bids.

**D.** "Bid Opening" means the date, time and place set for opening of bids.

**E.** "Bid Sample" means a representative specimen of the item that will be available in response to the bid.

**F.** "Bidder" is a person who submits a bid in response to the City's invitation to bid.

**G.** "Bidding Period" means the span of time between the date of the invitation to bid and the time and date set for receipt of bids. A minimum of 14 calendar days shall be provided, unless a shorter time is deemed necessary in the public interest for a particular procurement.

**H.** "Board" means Local Contract Review Board.

**I.** "Contract" means the written agreement, including the City's solicitation document and the accepted portions of a bid or proposal, between the City and the contractor describing the work to be done and the obligations of the parties. Depending upon the goods and services being procured, the City may use "contract" as meaning a purchase order, price agreement, or other contract document in addition to the City's solicitation document and the accepted portions of a

bid or proposal. If the contract is for a public improvement, the "contract" may consist of the City's solicitation document, including any addenda, the general and special conditions governing the work, the accepted portions of the bid or proposal, the performance and payment bond (if required), plans, technical specifications, approved shop drawings, and any contract amendments, including approved change orders.

**J.** "Contract Price" means the total of the awarded bid or proposal amount, including any approved alternates and any fully executed change orders or amendments.

**K.** "Contract Release Order" means the document authorizing an additional purchase on an existing requirement contract.

**L.** "Contractor" means the individual, firm, or corporation awarded the public contract to furnish the City the goods, services, or work procured in the City's solicitation.

**M.** "Descriptive Literature" means materials submitted by prospective vendors to provide information concerning the products available in response to the bid.

**N.** "Lowest Responsible Bidder" means the lowest bidder who has substantially complied with all prescribed public bidding procedures and requirements and who has not been disqualified by the public contracting agency under ORS 279B.130 or 279C.440.

**O.** "Proposer" is a person who submits a proposal in response to the City's Request for Proposals.

**P.** "Solicitation Document" means an Invitation to Bid or Request for Proposals which included all documents, whether attached or incorporated by reference, utilized for soliciting bids or proposals.

**Q.** "Specifications" means any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. Specifications may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery and the quantities or qualities of materials to be furnished under the contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications may be incorporated by reference and/or through attachment to the contract.

## 30.010 COMPETITION

**A.** Contracts issued by the City shall be awarded by formal competitive process except as otherwise exempted under the Oregon Public Contracting Code or these rules.

**B.** It is the policy of the City to encourage public contracting competition that supports openness and impartiality in the maximum extent possible.

**C.** The City finds that:

**1.** Competition exists not only in prices, but in the technical competence of suppliers, in their ability to make timely deliveries, and in the quality and performance of their products and

services and that a balance must exist between performance competition and price competition.

**2.** The nature of effective competition varies with the product or service being procured and, that while competitive sealed bids are a common method of procurement, it is not always the most advantageous, practical or cost-effective method of source selection. The cost of the selection process must be considered — a costly selection process is not appropriate for contracts with a low dollar value.

**3.** Meaningful competition can be achieved through a variety of methods when procuring products or services. The methods include but are not limited to:

a. Price competition as represented by the initial or acquisition price;

b. Competition as represented by price and performance evaluations of the competing items and suppliers;

c. Competition as represented by the evaluation of the capabilities of bidders or proposers to perform needed services;

d. Competition as represented by evaluation of the capabilities of the bidders and proposers to perform the services followed by a negotiation on price;

e. Competition as represented by another method of procurement that is reasonably determined to satisfy the City's needs.

**D.** All public contracts shall be made under conditions that foster or reflect competition among a sufficient number of potential suppliers that offer a wide spectrum of products and services and that represent a broad marketplace. Fostering competition shall be reflected in:

1. Research made to determine possible new sources of supply;

2. Attempts made to ensure solicitation documents are simple and inviting;

3. Everyday courtesy shown to prospective suppliers and contractors; and

4. The way information on contracting opportunities is provided to suppliers including but not limited to advertisement in publications of general circulation or in trade publications and any other reasonable methods that encourage competition.

**E.** The City may evaluate every aspect of competition in its efforts to purchase products or services, choose the appropriate solicitation process, or award contracts according to the criteria described herein and arrive at offers that represent optimal value to the City.

## 30.020 ELIGIBILITY TO BID ON CONSTRUCTION CONTRACTS

A person shall not submit a bid or proposal to work as a construction contractor unless that person is first registered with the Construction Contractors Board or licensed by the State Landscape

Contractor's Board as required by ORS 671.530. Bids from persons who fail to comply with this requirement shall be deemed non-responsive and be rejected.

The City may require prequalification of bidders in accordance with ORS 279C.430 and ORS 279C.435. The City may also disqualify a bidder from consideration for contract award in accordance with ORS 279C.440.

## 30.025 SOLICITATION DOCUMENTS

Solicitation documents shall include the following:

**A.** Instructions and information to bidders or proposers concerning the submission requirements, including the time and date set for opening, the name, address and title of the person designated to receive bids and a contact person, if different, a statement the bid or proposal must be physically received by the City by the deadline and any other special information relating to bid submission. The bid deadline shall be at least seven days after the first publication of notice and 5 days after the last publication of notice.

**B.** The date that pre-qualification applications must be filed if pre-qualification is a requirement.

**C.** The character of the work to be done or the items to be purchased, including, as applicable: specifications, delivery or performance schedule, inspection and acceptance requirements, and special evaluation factors;

**D.** The office where any additional information, including additional specifications, may be reviewed or obtained;

**E.** For bids — the contract terms and conditions, including warranty and bonding or other security requirements, as applicable. For proposals, a list of contract terms required by the City, a list of additional issues to be included in the contract, and a list of issues for which the proposer is expected to propose contract terms.

**F.** That the solicitation may be cancelled or that any or all bids may be rejected for not complying with all prescribed procedures and requirements;

**G.** That any and all bids may be rejected for good cause on a finding that it is in the public interest to do so;

**H.** In invitations to bid, a statement whether the bidders is a resident bidder as defined in ORS 279A.120 ([1]) (b);

**I.** That a contractor must be licensed for asbestos abatement under ORS 468A.710, if applicable;

**J.** A statement that no bid or proposal for construction shall be received or considered by the City unless the bidder or proposer is registered with the Construction Contractors Board per PCR 30.020 ;

**K.** If bid or proposal security is required, a description of the security required;

**L.** A description of any performance and payment bonding requirements;

**M.** For proposals, a description of the manner in which proposals will be evaluated and the relevant value of each evaluation factor, including price. If a multi-tiered process is used, that process will be described, including the process for protesting the decision at any stage of the process;

**N.** If applicable, a statement that no bid will be considered unless the bid contains a statement that the bidder will comply with ORS 279C.840 or 40 U SC 276a; and

**O.** All addenda issued by the City.

## 30.030 BIDS AND PROPOSALS ARE OFFERS

**A.** Bids and proposals constitute an offer to enter into a contract which, if accepted by the City, shall bind the bidder or proposer to a contract unless the bid or proposal is withdrawn prior to opening.

**B.** The bid or proposal shall constitute a "firm offer" unless bidders or proposers are specifically authorized to take exceptions or to leave terms open to negotiation by the invitation to bid or request for proposals. However, nothing in this provision prohibits the City from negotiating with a bidder or proposer to the full extent allowed by state law. Unless expressly authorized by the solicitation documents or these rules, bidders or proposers shall not make their bids or proposals contingent upon the City's acceptance of specifications or contractual terms that conflict with or are in addition to those advertised in the solicitation documents.

## 30.035 PUBLIC NOTICE

**A.** Distribution

Solicitation documents or notices of the availability of bid documents shall be mailed to likely bidders and proposers, placed on the Oregon Department of Administrative Service's electronic procurement system known as the "Vendor Information Program," or otherwise furnished to a sufficient number of bidders or proposers for the purpose of securing competitive bids or proposals. Notice of availability shall indicate where, when, and for how long the bid/proposal documents may be obtained. The City many charge a fee for the bid documents.

**B.** Advertising

**1.** Every formal solicitation of bids or proposals shall be advertised. An advertisement for bids or proposals shall be published at least once in at least one newspaper of general circulation in the City and in as many additional issues and publications as the City may determine to be necessary or desirable to ensure competition. If for a construction contract in excess of $100,000 notice shall be published in at least one trade newspaper of general statewide circulation. The City shall endeavor to provide information concerning bids and proposals on its website and may post information on other databases.

**2.** All advertisements for bids or proposals shall state:

a. The date and time after which bids will not be received, which date shall not be less than five (5) days after the date of the last publication of the advertisement;

b. The date that pre-qualification applications must be filed if pre-qualification is a requirement;

c. The work to be done or the items to be purchased;

d. The office where additional documentation, including specifications, specifications may be reviewed or obtained;

e. The name, title, and address of the person designated to receive bids;

f. The date, time, and place that bids or proposals will be opened;

g. If for a public improvement, whether the prevailing wage provisions of ORS 279C.800 to 279C.870 and/or the Davis-Bacon Act (40 U SC 276a) apply.

**C.** Posting of bid or proposal advertisement

A copy of each bid or proposal advertisement shall be posted at the business office of the City. Bidders or proposers may obtain a copy upon request.

## 30.040 BID OR PROPOSAL PREPARATION

Bid and Proposal Preparation Instructions:

**A.** Except as otherwise allowed, as applicable, bids and proposals shall be typed or prepared in ink and shall be signed in ink by the submitter or an authorized representative. The City will not accept facsimile bids, proposals, or signatures.

**B.** Bids and proposals shall be made on the bid forms provided unless otherwise instructed in the solicitation document.

**C.** Alterations or erasures, if any, shall be initialed in ink by the person signing the bid.

**D.** Bids and proposals shall include all required documents and descriptive literature.

## 30.045 BIDDER PRE-QUALIFICATION

The City may require mandatory pre-qualification of bidders on forms prescribed in the bid document. When pre-qualification is required by the bid documents as a condition for bidding, the City shall not consider the bid(s) of any prospective bidder who is not pre-qualified. The City shall determine qualifications within 30 days of receipt of an application for prequalification. In determining responsibility of the applicant, the City shall consider only the criteria listed in ORS 279B.110(2). The City may have a separate pre-qualification process. If a bidder is currently pre-qualified by the Oregon Department of Transportation to perform specific classes of work, the

bidder shall be presumed qualified to perform similar work for the City.

## 30.050 BIDDER SUBMISSIONS

**A.** Samples and Descriptive Literature

Samples or descriptive literature may be required when it is necessary to evaluate required characteristics of an item. Samples may be returned in accordance with provisions contained in the bid documents.

**B.** Identification of Bids and Proposals

Bids and proposals shall be submitted in a sealed envelope appropriately marked to ensure proper identification and special handling. The City shall not be responsible for the proper identification and handling of any bid not submitted in the designated manner or format to the required delivery point. The City may refuse to accept or may reject any bid or proposal not properly sealed or marked.

**C.** Receipt of Bid or Proposal

It is the submitter's responsibility to ensure that bids or proposals are received by the City at the required delivery point prior to the stated bid or proposal closing time regardless of the method used to submit or transmit them.

## 30.055 BID SECURITY

**A.** Public Improvement Contracts

Bid security not to exceed 10 percent of the base bid(s) shall be required for public improvement contracts where the amount of the contract exceeds $10,000. The bid security shall be forfeited if the bidder fails to execute the contract promptly and properly if awarded.

**B.** Other Public Contracts

Bid security not to exceed 10 percent of the bid may be required by the City for other contracts in order to guarantee acceptance of the award. This requirement shall be stated in the bid documents if in effect.

**C.** Contracts Under $10,000

Bid security for contracts of less than $10,000 shall be required only in critical circumstances so as not to discourage competition.

**D.** Form of Bid Security

The following forms of bid security will be accepted by the City:

**1.** Surety bond from surety company authorized to do business in the State of Oregon;

2. Cashier's check, certified check, or savings and loan secured check; or

3. Annual surety bond filed with the City (except for public improvement contracts).

**E.** Return of Bid Security

The bid security of all unsuccessful bidders shall be returned after a contract has been executed or all bids have been rejected. The City may return the bid security of unsuccessful bidders after bid opening but prior to award if the return does not prejudice bid award and provided that the security of at least the three lowest bidders is retained pending the execution of a contract.

**F.** Security for Proposals

If contracts are to be awarded based on competitive proposals, the City may, in its discretion, require proposal security on the same terms as the bid security described in this section. Proposal security shall normally be required for any public improvement contract to be awarded by a proposal process.

## 30.060 PRE-BID OR PRE-PROPOSAL CONFERENCES

Pre-bid or pre-proposal conferences may be held by the City to explain the City's requirements, conduct site inspections, or otherwise supplement or clarify information. The City may require attendance at the conference as a condition for bidding or submitting a proposal. The conferences shall be announced in the solicitation documents. The conference shall be held within a reasonable time after the solicitation documents have been issued but sufficiently before bid closing to allow consideration of the conference results in preparing submittals. Statements at the conference shall not change the solicitation documents unless confirmed to all prospective bidders or proposers by means of a written addendum to the solicitation documents.

## 30.065 ADDENDA TO SOLICITATION DOCUMENTS

**A.** Form

Changes to solicitation documents shall be accomplished by addenda. The bidder or proposer shall acknowledge receipt of all addenda issued, either with the bid or proposal or separately prior to opening. A solicitation may be delayed or suspended by addendum if in the best interest of the City.

**B.** Distribution

Addenda shall be sent to all prospective bidders or proposers known to have obtained the solicitation documents or attended any mandatory conferences.

**C.** Timeliness

1. Addenda shall be issued within a reasonable time prior to bid closing to allow consideration prior to submittal of the bid or proposal, but in no case less than 48 hours before the

submittal deadline. The standard minimum notification for City-issued addenda shall be 72 hours prior to the close of the bid or proposal. If staff has need to issue any addenda with less than 72 hours (but not less than 48 hours) staff shall document for the project file the reasons for the shorter notification timeframe. If necessary, the City may notify prospective bidders or proposers by telephonic facsimile (fax), e- mail, or telephone. If telephone is used, the City shall confirm the oral notice with a written addendum.

**2.** In its discretion, the City may extend the closing date and time to allow prospective bidders or proposers to analyze and adjust to changes made by Addenda. The City shall notify prospective bidders or proposers of new closing date and time either in the Addendum or in writing accompanying the Addendum.

**D.** Addenda to Multi-Tier RFPs

If a multi-tier process is used to evaluate proposals, the City may issue addenda applicable to any tier of the process at least 5 days before starting that tier of the process. ~~.~~ If the City does issue such addenda, amended or supplemental proposals may be submitted before the next tier of the process is started.

## 30.070 PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS OR PROPOSALS

**A.** Modifications

Bids or proposals once submitted may be modified in writing prior to the time and date set for bid closing. Any modifications shall be prepared on the company letterhead, signed by an authorized officer, and state that the new document supersedes or modifies the prior bid or proposal. To ensure the integrity of the process, the envelope containing any modifications to a bid or proposal shall be marked as follows:

Bid/Proposal Modification
Bid/Proposal Title, Number, and/or Other Identification

**B.** Withdrawals

**1.** Bids or proposals may be withdrawn by written notification on company letterhead signed by an authorized person and received prior to the time and date set for closing. Bids or proposals also may be withdrawn in person prior to the scheduled closing upon presentation of appropriate identification.

**2.** Unopened bids or proposals withdrawn under subsection (a) above may be released to the bidder after voiding any date and time documentation detailed as the result of the initial submittal.

**3.** Requests to withdraw mailed bids or proposals shall be marked as follows:

Bid/Proposal Withdrawal
Bid/Proposal Title, Number, and/or Other Identification

**C.** Documentation

All documents relating to the modification or withdrawal of bids or proposals shall be made a part of the appropriate bid file.

## 30.075 RECEIPT, OPENING, AND RECORDING OF BIDS AND PROPOSALS

**A.** Receipt

Upon receipt, each bid, proposal, or modification shall be time-stamped or marked by hand but not opened and shall be stored in a secure place until opening. If bids, proposals, or modifications are opened inadvertently or are opened prior to the time and date set for opening because they were improperly identified, the bids, proposals, or authorized modification documents shall be resealed and stored for opening at the correct time. When this occurs, documentation of the procedure shall be placed in the file.

**B.** Opening and Recording

Bids and modifications shall be opened publicly, at the time, date, and place designated in the bid documents. If witnesses are present at the bid opening, and to the extent practicable, the name of each bidder, the bid price(s), and such other information as considered appropriate, shall be read aloud. On voluminous bids the City may advise bidders as part of the bid documents that the bid items and prices will not be read aloud.

Proposals may be opened at any time after the deadline for submittal of proposals. A summary sheet providing basic information about each proposal shall be prepared.

**C.** Availability

Opened bids shall be available for public inspection prior to award except to the extent the bidder designates trade secrets or other proprietary data to be confidential (ORS 192.501(2)). Proposals shall not be available for public inspection until after a contract is awarded and entered into. The City shall verify and determine that the confidential information claimed to be exempt is in fact exempt from disclosure under the Oregon Public Records Law. Material so designated shall accompany the bid and shall be readily separable from the bid or proposal in order to facilitate public inspection of the non- confidential portion of the bid or proposal. Prices, makes, model, or catalog number of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designation to the contrary.

**D.** Notice of Intent to Award

The City shall provide notice of intent to award to each person that has submitted a bid or proposal. The notice shall state the date, time and location of the bid award decision. The notice shall include the name of the person or entity that staff recommends the contract be awarded to. The notice shall include any bid comparisons sheets or proposal comparison sheets.

## 30.080 LATE BIDS, PROPOSALS, WITHDRAWALS, AND MODIFICATIONS

Any bid, proposal, withdrawal, or modification received after the deadline for submission set in the solicitation documents is late and shall not be considered. The City may use any watch or clock to determine the time and the determination of the City employee or officer receiving the bids as to whether a bid, proposal, withdrawal, or modification is late shall be final and not subject to challenge.

## 30.085 MISTAKES

**A.** General

Under extraordinary circumstances, a bid or proposal may be withdrawn after the deadline for submittal because of an inadvertent nonjudgmental mistake. ~~/~~If the mistake is attributable to an error in judgment, the bid or proposal may not be withdrawn or corrected. Correction or withdrawal by reason of nonjudgmental mistake is permissible but only to the extent it is not contrary to the interest of the City or the fair treatment of other bidders or proposers.

**B.** Mistakes Discovered after Bid Closing but before Award

This section applies to situations where mistakes in bids are discovered after the submission deadline but before award.

**1.** Minor Informalities

Minor informalities are matters of form rather than substance that are evident from the bid documents, or insignificant mistakes that can be waived or corrected promptly without prejudice to other bidders or the City; that is, the informality does not affect price, quantity, quality, delivery, or contractual conditions except in the case of informalities involving unit prices. Examples include, but are not limited to, the failure of a bidder to:

a. Return the number of signed bids or number of other documents required by the bid documents

b. Sign the bid form in the designated block so long the bid documents evidence an intent to be bound; or

c. Acknowledge receipt of an addendum to the bid documents, but only if:

~~1.~~1) It is clear from the bid that the bidder received the addendum and intended to be bound by its terms; or

~~2.~~2) The addendum involved did not affect price, quantity, quality, or delivery.

**C.** Mistakes Where Intended Correct Bid is Evident

If the mistake and the intended correct bid are clearly on the face of the bid form, or can be substantiated from accompanying documents, the City may accept the bid. Examples of mistakes that may be clearly evident on the face of the bid form are typographical errors, errors in extending

unit prices, transposition errors, and arithmetical errors. Mistakes that are clearly evident on the face of the bid form or proposal document also may include instances in which the intended correct bid or proposal item is made clearly evident by simple arithmetic calculations. For example, a missing unit price may be established by dividing the total bid or proposal item by the quantity of units for that item, and a missing or incorrect total bid or proposal price for an item may be established by multiplying the unit price by the quantity when those figures are available on the bid or proposal. For discrepancies between unit prices and extended prices, unit prices shall normally prevail.

**D.** Mistakes Where Intended Correct Bid is Not Evident

The City may not accept a bid in which a mistake is clearly evident on the face of the bid form but the intended correct bid is not clearly evident or cannot be substantiated from accompanying documents.

## 30.090 TIME FOR ACCEPTANCE

Bids shall be valid and binding offers for 30 days from the deadline to submit bids unless otherwise specified in the bid documents. Proposals shall be binding and valid offers for 60 days from the date of the submittal deadline.

## 30.095 EXTENSION OF TIME FOR ACCEPTANCE OF BID OR PROPOSALS

The City may request orally or in writing that bidders or proposers extend the time in which the City may accept their offers.

## 30.100 EVALUATION AND AWARD

**A.** General

The contract, if awarded, is to be awarded to the lowest responsive and responsible bidder or the best responsive and responsible proposer. Consistent with the provisions of the solicitation documents and in the public interest as determined by the City, awards may be made by item, groups of items, or entire bid or proposal. The City reserves the right to reject any bid or proposal not in compliance with the solicitation documents or with state law, City Code, or these rules. The City reserves the right to reject any or all bids or proposals upon a finding by the City that it is in the public interest to do so.

**B.** Special Requirements

**1.** Solicitation documents shall set forth any special requirements and criteria that will be used to determine the lowest responsible bidder. No bid shall be evaluated for any requirement or criterion that is not disclosed in the bid documents or City regulation.

**2.** In determining the lowest responsible bidder, the City shall, for the purpose of awarding the contract, add a percent increase on the bid of a non-resident bidder equal to the percent, if any, or of the preference give to that bidder in the state in which the bidder resides.

**3.** The City may rely on a list provided for by the Oregon Department of Administrative

Services pursuant to ORS 279A.120 (1) (4) for preference provided for by this section.

**C.** Product Acceptability

**1.** The solicitation documents shall set forth the evaluation criteria to be used in determining product acceptability. The City may require the submission of samples, descriptive literature, technical data, or other material, and may also provide for accomplishing any of the following prior to award.

a. Demonstration, inspection, or testing of a product prior to award for such characteristics as quality or workmanship;

b. Examination of such elements as appearance, finish, taste, or feel; or

c. Other examinations to determine whether the product conforms to specifications.

**2.** The acceptability evaluation is conducted only to determine that a bidder's offering is acceptable as provided in the bid documents. Any bidder's product which does not meet the minimum requirements shall be rejected.

**D.** Determination of Lowest Responsive and Responsible Bidder

Following determination of product acceptability as set forth in subsection C, if applicable, bids will be evaluated to determine which bidder offers the lowest cost to the City in accordance with the evaluation criteria set forth in the bid documents. Only objectively measurable criteria, which are set forth in the bid documents, shall be applied in determining the lowest responsible bidder. Examples of such criteria include, but are not limited to, transportation cost, volume weighing, trade-in allowances, depreciation allowances, cartage penalties, and ownership or life cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors:

**1.** Are reasonable estimates based upon information the City has available concerning future use;

**2.** Treat all bids equitably; and

**3.** Recognize that public policy requires acquisitions and public improvements to be accomplished at the least cost.

The City shall take into account any preferences provided by these rules in determining the lowest bid.

**E.** Determination of Best, Responsive, and Responsible Proposer

Proposals will be evaluated to determine which proposer offers the best solution to the City in accordance with the evaluation criteria set forth in the solicitation documents. Only the criteria set forth in the solicitation documents shall be applied. The criteria shall be as objective as possible. Examples of evaluation criteria may include, but are not limited to, cost, quality, service,

compatibility, product reliability, operating efficiency, expansion potential, performance history on other private and public contracts, experience of key personnel, adequacy of equipment and/or physical plan, financial wherewithal, sources of supply, references and warranty provisions. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such evaluation factors shall:

1. Be reasonable estimates based on information available to the City;

2. Treat all proposals equitably;

3. To the extent that the proposal involves a public improvement, recognize that public policy requires public improvements to be accomplished at the least cost.

**F.** In evaluating proposals, the City may use any of the following methods:

1. An award based solely on an evaluation of the written proposals;

2. Discussions with a number of proposers leading to a best and final offer from each proposer and an evaluation of the best and final offers;

3. An award based on the written proposals and interview performance;

4. Serial negotiations, staring with the highest ranked proposer;

5. Competitive simultaneous negotiations;

6. A multi-tiered process, with some number of proposer being eliminated at each stage of the process;

7. A multi-stage process, with a qualifications determination at the first stage of the process, followed by cost considerations; or

8. Any other method or combination of methods designed to best serve the needs of the City and its taxpayers.

The solicitation document shall describe the process to be followed.

**G.** <u>No Assignment or Transfer of Contract Rights</u>

Unless an express provision of the public contract otherwise provides, the contractor shall not assign, sell or transfer rights, nor delegate responsibilities, under public contract, either in whole or in part, without first obtaining the City's prior written consent. Unless otherwise agreed by the City in writing, such consent shall not relieve the contractor of any obligations under a public contract, and any assignee or transferee shall be considered the agent of the contract and bound to abide by all provisions of the public contract. Except in the event of a novation, if the City consents in writing to an assignment, sale, or transfer of the contractor's rights and responsibilities, the contractor and its surety, if any, shall remain ultimately liable to the City for complete performance of the public contract as if no such assignment, sale, or transfer had occurred.

## 30.105 LIFE CYCLE COST ANALYSIS

**A.** In determining the lowest responsible bidder, in the award of a contract, the City may use the cycle costing. As used in this rule, life cycle costing means determining the cost of a product for its useful life.

**B.** The City shall follow these procedures:

**1.** At the time of writing specifications for the product, the City shall identify those factors which will have cost implications over the life of the product and which, for evaluation purposes, will be used to adjust the bid or proposal price of the product.

**2.** The solicitation documents shall set out clearly the factors and methodology to be used in life cycle cost adjustments.

**3.** The results of life cycle costing adjustments shall be applied to the bid or proposal price of the product(s) offered. The bid or proposal that results in the lowest overall ownership cost, taking into account the life cycle costing adjustments, shall be considered the lowest bid or best proposal for purposes of bid or proposal price evaluation.

## 30.110 RESPONSIBILITY

**A.** A responsible bidder or proposer is one who has:

**1.** Adequate financial resources to perform the contract, or the ability to obtain such resources. The City shall require acceptable evidence of the bidder's or proposer's ability to provide or obtain the required financial resources. Acceptable evidence normally consists of, but is not limited to, current and recent balance sheets; income statements; cash flow statements; and/or a performance bond from an acceptable surety in an amount equal to the bid or proposal price. Such evidence may also include a commitment of specific arrangement that will be in existence at the time of contract award to rent, purchase, or otherwise acquire the needed facilities, equipment, or other resources;

**2.** The ability to comply with the required or proposed delivery or performing schedule, taking into consideration all existing commercial and public business commitments;

**3.** A satisfactory performance record. A bidder or proposer who is, or recently has been, seriously deficient in contract performance shall be presumed to be non-responsible, unless the City determines that the circumstances were properly beyond the contractor's control or that the contractor has taken appropriate corrective action. Record of failure to perform acceptably is strong evidence of non-responsibility. The City shall consider the number of contracts involved and the extent of the deficiency of each in making this evaluation. In addition, the City may consider whether the bidder's performance history demonstrates responsibility as defined in ORS 279B.110 and 279C. 375;

**4.** Key personnel available of sufficient experience, as determined by the City, to perform the contracts;

5. The necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain these skills and abilities as required to satisfactorily perform the contract. These may include, as appropriate, such elements as production control procedures, property control systems, and quality assurance measures applicable to materials to be produced or services to be performed by the bidder and its proposed subcontractor(s);

6. The necessary production, construction, and technical equipment and facilities, or the ability to obtain them;

7. A satisfactory record of integrity;

8. For contractors on public improvement contracts, has not been determined to be not responsible by the Construction Contractors Board; and

9. Is otherwise qualified and eligible to receive award under applicable laws and regulations.

**B.** The City shall consult with the Construction Contractor's Board concerning the responsibility of any person to whom a public improvement contract is proposed to be awarded, and shall comply with the reporting requirements of ORS 279C.375. The City has the right, prior to awarding any public contract, to make such investigation as is necessary to determine whether a bidder or proposer is responsible. This investigation may include, but is not limited to:

1. An inquiry into the responsibility of proposed subcontractors and suppliers.

2. Requiring a bidder or proposer to demonstrate its financial ability to perform the contract as provided in subsection A.1 of this rule. In exercising this right, the City shall notify the apparent successful bidder or proposer in writing to submit such documentation as the City deems necessary to complete a thorough evaluation of financial ability.

3. By submitting a bid or proposal, a bidder or proposer authorizes the City to request any credit report information the City deems necessary to investigate and evaluate financial responsibility to perform the contract(s).

**C.** Failure of a bidder or proposer to promptly supply information requested by the City during its responsibility investigation shall be grounds for a finding of non-responsibility.

**D.** Only bids and proposals from responsible bidders or proposers, as defined in this rule, shall be eligible for contract award. Bid or proposals from non-responsible bidders or proposers shall be rejected as provided in PCR 30.115.

## 30.115 RESPONSIVE AND NON-RESPONSIVE BIDS OR PROPOSALS; ACCEPTANCE AND REJECTION

**A.** A "responsive bid or proposal" is one that complies in all material aspects with the solicitation documents and with all prescribed public bidding procedures and requirements.

**B.** A "non-responsive bid or proposal" is one which:

1. Omits, or is unclear as to the price and the price cannot be determined in the bid or proposal documents;

2. Offers goods or services of a quality or quantity inferior to that requested in the solicitation documents;

3. Does not meet the delivery date requirements specified in the solicitation documents;

4. Takes exception to the terms and conditions of the solicitation documents other than as allowed by these rules or the solicitation documents;

5. Is conditional upon the City's acceptance of terms and conditions difference from those contained in solicitation documents, except as allowed by these rules or the solicitation documents; or

6. Contains a deviation which, if the bid or proposal were accepted, would give the bidder or proposer a substantial advantage or benefit not shared by other bidders or proposers to the solicitation documents.

**C.** ~~C.~~ The City shall accept, and consider for award, only those bids or proposals, which are responsive as defined in this rule. Non-responsive bids or proposals shall be rejected, as provided in PCR 30.115.

## 30.120 LOW TIE BIDS

**A.** Definition

Low tie bids are low responsive bids from responsible bidders that are identical in price, fitness, availability and quality and which meet all the requirements and criteria set forth in the bid documents.

**B.** Award

1. If low tie bids are received, a preference shall be given to goods and services that have been manufactured or produced in Oregon.

2. If the bids remain tied after application of the Subsection 1, preference shall be given to the bidder whose principal offices or headquarters are located in Oregon.

3. If the bids remain tied after application of Subsections 1 and 2, the award shall be made by drawing lots among any tied Oregon bidders. Such bidders shall be given notice and an opportunity to be present when the lots are drawn.

4. If there are no Oregon bidders after application of subsections 1 and 2, award of the contract shall be made by drawing lots.

## 30.125 REJECTION OF INDIVIDUAL BIDS OR PROPOSALS

**A.** General

This section applies to rejections, in whole or in part, of individual bids or proposals. The City may reject in whole or in part, any bid not in compliance with all prescribed bidding procedures and requirements, and may reject for good cause any bid or proposal upon a written finding of the City that it is in the public interest to do so. No bid shall be considered unless the bid security, properly executed, has been submitted with the bid as required by the bid documents.

**B.** Reasons for Rejection

Reasons for rejecting a bid or proposal include but are not limited to:

**1.** The submitter has not pre-qualified when pre-qualification is required or has been disqualified;

**2.** The submitter has been declared ineligible by the Commissioner of the Bureau of Labor and Industries under ORS 279.361;

**3.** The bid or proposal is non-responsive, that it does not conform in all material respects to bid documents or requirements, including all prescribed public procurement procedures and requirements;

**4.** The supply, service, or construction item offered in the bid or proposal is unacceptable by reason of its failure to meet the requirements of the solicitation documents or permissible alternates or other acceptability criteria set forth in the solicitation documents;

**5.** The submitter is not capable of satisfying the terms and conditions of the public contract in a timely manner due to financial incapacity; inability to obtain bonding, loss of license, or other objective cause;

**6.** The submitter within the last 5 years has been found, in a civil, criminal, or administrative proceeding, to have committed fraud, misrepresentation, price-rigging, unlawful anti-competitive conduct, or similar behavior;

**7.** The submitter has been determined responsible (i.e., adjudicated by a court, or as determined in writing by the City agency in the case of a public contract) for more than one breach of a public or private contract(s) in the last 3 calendar years before the scheduled date of the bid opening;

**8.** The security has not been submitted or properly executed as required by the solicitation documents;

**9.** When applicable, the bidder has not met the emerging small business, disadvantaged business, minority business, and women business enterprise requirements, if any, established by the City, and has not made a good faith effort to comply with the requirements prior to the time bids are opened;

10. The submitter failed to certify in accordance with Section D of this rule;

11. Other circumstances of the particular bid, proposal, or submitter (including submitter's subcontractors) indicate that acceptance of the bid or proposal would impair the integrity of the selection process or result in an imprudent contract by the City; or

12. The contractor has discriminated against subcontractors because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.

~~A.~~C. Form of Business Entity

The corporate or business form of bidders or proposers shall be subject to scrutiny, so that previously disqualified bidders or proposers, or their officers and directors, may not by subterfuge, change of apparent ownership, or other adjustments in formal appearance, avoid application of this rule.

~~B.~~D. Non-discrimination Certification

The bidder or proposer shall certify as part of the bid that the contractor has not discriminated against subcontractors because the subcontractor is certified as a minority, women, or emerging small business enterprise.

## 30.130 REJECTION OF ALL BIDS OR PROPOSALS

A. Bid Rejection

All bids or proposals may be rejected for good cause upon a written finding by the City that it is in the public interest to do so. Notification of rejection of all bids or proposals, along with the good cause justification and finding of public interest shall be sent to all that submitted a bid or proposal.

B. Rejection Criteria

~~B.~~ Reasons for rejecting all bids or proposals include but are not limited to:

1. An error in the solicitation documents, including its terms, conditions, or specifications that unnecessarily restricted competition for the public contract;

2. The price, quality, or performance presented by the lowest or best responsible bidder or proposer is, in the City's opinion, too costly or of insufficient quality to justify acceptance of the bid or proposal. This criterion may be satisfied evidence that the same goods or services can be obtained otherwise for less cost;

3. Misconduct, error, or ambiguous or misleading provisions in the bid documents or process threaten the fairness and integrity of the competitive process; or

4. 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 bid documents.

## 30.135 PROTESTS OF AWARD

**A.** Purpose

Adversely affected or aggrieved bidders or proposers must exhaust all avenues of administrative review and relief before seeking judicial review of and decision by the City under the Public Contracting Code or these rules.

**B.** Notice of Award

The written notice of award of the contract shall constitute a final decision by the City to award the contract if no written protest of the notice of award is filed with the City within seven calendar days of the notice of award or such other period as provided in the City's solicitation. If a protest is timely filed, the notice of award is a final decision of the City upon issuance of a written decision denying the protest and affirming the award. The notice of award and any written decision on a protest shall be sent to every bidder or proposer who provided an address.

**C.** Right to Protest

Any actual bidder or proposer who is adversely affected or aggrieved by the City's notice of award of the contract to another bidder or proposer on the same solicitation shall have seven calendar days after notice of award to submit to the City a written protest of the notice of award or such other time as provided in the solicitation documents. The written protest shall specify the grounds upon which the protest is based. In order to be adversely affected or aggrieved, a bidder or proposer must itself claim to be eligible for award of the contract as the lowest responsible bidder or best proposer and must be next in line for award; i.e., the protester must claim that all lower bidders or better proposers are ineligible for award because they are non-responsive or non-responsible. The City shall not entertain a protest submitted after the time period established in this rule or such different period as may be provided in the City's solicitation.

**D.** Authority to Resolve Protests

The City Manager, or designee, shall have the authority to settle or resolve a written protest submitted under section E of this rule.

**E.** Decision

If the protest is not settled or resolved by mutual agreement, the City Manager, or designee, shall promptly issue a written opinion on the protest. If the opinion denies the protest, judicial review of this decision will be available if provided for by statute. If the City Manager or designee determines that there is good cause for the protest, the matter shall be submitted to the Board for further action. The decision of the Board on a protest shall be final. Both the protestor and the person to whom the contract was awarded shall have a right to present arguments to the Board.

## 30.1-40 PROTESTS OTHER THAN NOTICE OF AWARD

**A.** A protest may be filed to contest the adoption or amendment of these rules, adoption of a class or contract specific exemption, solicitation documents (including specifications and contract terms), or the process used in the solicitation. The protest must be filed with the City's Contracts and Purchasing Office within 7 days of the adoption or amendment of rules or exemptions, the publication of solicitation documents, or other action being protested. Grounds for protest are limited to:

**1.** That the City acted contrary to law;

**2.** That the City's actions unnecessarily restrict competition; or

**3.** That the City has improperly specified a brand name.

**B.** The protest must include:

**1.** Sufficient information to identify the solicitation;

**2.** The grounds for the protest;

**3.** Evidence or supporting information; and

**4.** The relief sought.

**C.** The City Manager shall, if possible, issue a written decision on the protest under this section at least three days before any bid or proposal opening that could be affected by the protest.

**D.** A bidder or proposer who does not protest a proposed contract term included in the solicitation documents must accept the contract term as included in the solicitation documents.

**E.** If protest of a solicitation is timely received, the opening date may be extended if necessary to allow consideration for the protest and issuance of any addenda to the solicitation documents.

**F.** Envelopes containing protests of solicitation specifications shall be marked as follows:

Specification Protest
Bid/Proposal Title, Number, and/or Other Identification

## 30.145 NEGOTIATION

**A.** Negotiation with Bidders

If a project is competitively bid and all responsive bids from responsible bidders exceed the City's cost estimate, the City may negotiate with the lowest responsive, responsible bidder, prior to awarding the contract, in order to solicit value engineering and other options to attempt to bring the project with the agency's cost estimate.

**1.** A negotiation with the lowest responsive, responsible bidder pursuant to this paragraph shall

not result in the award of the contract to that bidder if the scope of the project is significantly changed from the original bid proposal.

**2.** Notwithstanding any other provision of law, the records of a bidder used in contract negotiation pursuant to this paragraph are not subject to public inspection until after the negotiated contract has been awarded or the negotiation process has been terminated.

**B.** Negotiation with Proposers

The City may negotiate with proposers after proposal opening in order to try to reach the best possible contract for the City. Proposals may be revised in the course of negotiations for the best offer, provided that any revision is not so extensive as to be unfair to other proposers who do not have the opportunity to negotiate.

## 30.150 BIDDER DISQUALIFICATION

**A.** Definitions - As used in this rule:

**1.** "Disqualification" means the debarment, exclusion or suspension of a person from right to submit bids or proposals in response to the City's solicitations for a reasonable, specified period of time named in the order of disqualification. A contractor or vendor so debarred, excluded or suspended, is disqualified.

**2.** "Person" means an individual, partnership, or corporation. Disqualification attaches to and follows the individual, so that an individual who is a partner in a partnership or an officer or principal in a corporation which is disqualified may not re-form the business entity as a way of avoiding the disqualification.

**B.** Grounds for bid-specific disqualification include:

**1.** The person does not have sufficient financial ability to perform the contract. ~~.~~ If a bond is required to ensure performance of a contract, evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability;

**2.** The person does not have equipment available to perform the contract;

**3.** The person does not have key personnel available of sufficient experience to perform the contract; or

**4.** The person has repeatedly breached contractual obligations to public and private contracting agencies.

**5.** The person has discriminated against a subcontractor because the subcontractor is a minority, women, or emerging small business enterprise certified under ORS 200.055.

**6.** The person has engaged in conduct prohibited by ORS 200.075, including:

a. If the person has entered into any agreement representing that a disadvantaged, minority,

women or emerging small business enterprise, certified pursuant to ORS 200.055, will be performing or supplying materials under a public improvement contract without the knowledge and consent of the certified enterprise;

b. If the person exercises management and decision making control over the internal operations, as defined by ORS 200.075(1)(b), of any certified disadvantaged, minority, women or emerging small business enterprise;

c. If the person uses a disadvantaged, minority, women or emerging small business enterprise to perform contracting services or provide supplies under a public improvement contract to meet an established Disadvantaged Business Enterprise (DBE)/Minority-owned Business Enterprise/Woman-owned Business Enterprise (WBE)/Emerging Small Business (ESB) goal, when the enterprise does not perform a commercially useful function, as define by ORS 200.075(3), in performing its obligations under the contract.

**C.** Debarment

A prospective bidder or proposer may be debarred from consideration for an award for a period of up to three years if convicted of a criminal offense relating to a public contract; convicted of a crime involving dishonesty (as provided in ORS 279B.130(2)(b), convicted under antitrust statutes, has violated a contract and debarment for violation was listed in the contract terms, or failure to carry workers compensation or unemployment insurance.

Debarment shall be by written decision explaining the reasons for the debarment and explaining appeal rights. Appeals shall be provides under ORS 279B.425. Any appeal must be filed with the City's Contracts and Purchasing Office within three days after receipt of the notice of debarment.

**D.** Investigation

The City may make such investigation as is necessary to determine whether a person is qualified. If a bidder or prospective bidder fails to supply information promptly as requested by the City, such failure is grounds for disqualification.

**E.** Notice of Disqualification

The bidder or prospective bidder will be notified in writing by personal service or certified mail of the City's decision to disqualify the person from bidding with the City. The notice shall contain:

1. The effective date of the disqualification and the effective period of disqualification;

2. The grounds for disqualification from bidding; and

3. A statement of the contractor's appeal rights and applicable appeal deadlines.

**F.** Appeal of Disqualification

If a contractor wishes to appeal the City's decision to disqualify, the contractor must notify the City

in writing within three business days after receipt of the notification. The City shall mail its notice to the contractor by Certified Mail Return Receipt Requested, if not personally served. Appeals shall be conducted under the procedures and standards of ORS 279C.445 and 279C.450. A protest of a denial, revocation, or revision of a prequalification shall be filed within three business days after receipt of notice of the decision. On receipt of the protest, a hearing shall be set before the Local Contract Review Board and the hearing shall be held and the decision issued within 30 days of receipt of the protest. The Local Contract Review Board will consider the action de novo, based on applicable standards. ~~/~~If the denial is upheld, the person filing the protest shall reimburse the City for costs of processing the protest.

## 30.155 CANCELLATION~~ancellation~~ OF~~of~~ INVITATIONS~~nvitations~~ TO~~to~~ BID~~id~~ OR~~or~~ REQUEST~~equest~~ FOR~~for~~ PROPOSALS~~roposals~~

**A.** Cancellation in the Public Interest

An invitation to bid or request for proposal may be canceled, in whole or in part, and all bids received may be rejected when it is in the public interest as determined by the City. The reasons therefore shall be made part of the file.

**B.** Notice of Cancellation

When an invitation to bid or request for proposal is canceled prior to the submission deadline, notice of cancellation shall be sent to all known holders of the documents. When an invitation to bid or request for proposals is canceled after deadline for submission, notice shall be sent to those who submitted a bid or proposal. The notice of cancellation shall:

1. Identify the specification documents;
2. Briefly explain the reason for cancellation; and
3. Where appropriate, explain that an opportunity will be given to compete on any re-solicitation.

## 30.160 DISPOSITION OF BIDS OR PROPOSALS IN EVENT OF CANCELLATION

**A.** Prior to Bid Opening

When an invitation for bids or request for proposals is canceled prior to opening of the bids or proposals, all submissions will be returned unopened, if submitted with a clearly visible return address. ~~/~~If there is no return address on the envelope, the submissions will be opened to determine the source and then returned to sender.

**B.** After Opening

When all bids or proposals are rejected, those received shall be retained and become part of the City's permanent project file.

## 30.165 DOCUMENTATION OF AWARD

**A.** Basis of Award

Following award, a record showing the basis for determining the successful bidder shall be made a part of the file.

**B.** Contents of Award Record

The record shall consist of:

1. Completed bid tabulation sheet; or
2. Completed proposal evaluations; and
3. Written justification of any rejection of lower bids; or
4. Written explanation for any rejection of proposals for failing to meet mandatory requirements of the Request for Proposals.

## 30.170 FOREIGN CONTRACTOR

If a contractor is not domiciled in or registered to do business in the State of Oregon, the City shall require the contractor to promptly provide the Oregon Department of Revenue and the Secretary of State Corporation Division with any and all information required by those agencies relative the contract between the contract and City. The City shall have the right to withhold final payment to the contractor under this Rule until the contractor has met the requirement under the Rule.

## 30.175 CONTRACT TERMS AND CONDITIONS

**A.** Required Terms and Conditions

The City shall establish standard terms and conditions for contracts. Contracts shall include provisions relating to the following, if applicable. For those provisions referring to statutes, the contract language shall comply with and implement the statutes.

1. Payment of laborers and material suppliers; contributions to Industrial Accident Fund; liens and withholding taxes, and drug testing (ORS 279B.220, 279C.505);
2. Payment of claims by public officers, payments to first tier subcontractors and claims by labor and materials suppliers (ORS 279C.515),
3. Hours of labor (ORS 279B.020, 279B.235, 279C.520, 279C.540);
4. Environmental and natural resources regulations (279B.525);
5. Payment for medical care, compliance with or exemption from workers compensation laws (ORS 279B.230, 279C.530);

6. Prevailing wage rates (ORS 279C.830);

7. Salvaging, recycling, composting or mulching yard waste material, and salvage and recycling of construction and demolition debris (ORS 279B.225, 270C.510);

8. Certification by contractor of compliance with the Oregon tax laws according to ORS 305.385;

9. Certification by contractor of nondiscrimination as to relations with subcontractors (ORS 279A.110);

10. Inclusion of provisions in contracts with subcontractors, as required by ORS 279C.580;

11. Progress payments and retainage;

12. Bonding requirements (performance and payment bonds, and bonds required to be filed with the Construction Contractors Board or BOLI~~/~~); and

13. Any other requirement imposed by federal or state law, regulation, rule or ordinance, which is applicable to the contract.

**B.** The City may develop and require contract provisions relating to the following:

1. Termination of the contract;

2. Suspension of the work;

3. Labor and materials liens;

4. Liability in absence of bond;

5. Use of recovered resources and recycled and recyclable materials, including paper, oils, and tires;

6. Any other term to further the City's and the public interest.

**C.** Terms and Conditions Applicable to Construction Contracts

In cases where the contract calls for work as described in ORS 701.005(2) (i.e.; construction work), the contracts shall contain:

1. Certification by the "contractor" that the contractor is registered with the Construction Contractors Board according to ORS 701.035 to 701.055, unless prohibited by federal regulations.

2. Certification by the contractor that all subcontractors performing work as described in ORS 701.005(2) will be registered with the Construction Contractors Board according to ORS 701.035 to 701.055 before the subcontractors commence work under this contractor.

**D.** Special Terms and Conditions

The City may also establish special terms and conditions applicable to specified categories of contracts. Any special terms and conditions shall be included in the bid documents and become an integral part of those contracts.

**E.** Compliance and Exceptions to Terms and Conditions

1. Bidders and proposers shall be responsible for noting the terms and conditions included applicable to each set of solicitation documents.

2. By submitting a bid or proposal, the bidder or proposer acknowledges acceptance of and the intent to abide by the terms and conditions specified in the invitation to bid or request for proposals and agrees to enter into a contract consistent with state public contracting law requirements. Submission of a bid or proposal without objection to provisions listed in the form contract included in the solicitation documents constitutes an offer to enter into a contract on those terms and no negotiation of those terms is permitted after the contract award.

3. The City has the right to reject any bid or proposal that takes exception to specifications or to contract terms unless the right to take exception is expressly granted in the Invitation to Bid or Request for Proposals. Bids or proposals which take exception to the specifications or contract terms, or which are made contingent upon the City's acceptance of different or additional specifications or terms, may be rejected because they are not responsive to the Invitation to Bid or the Request for Proposals.

4. Any exceptions to any proposed terms and conditions must be clearly stated in writing by the bidder or proposer in the signed bid or proposal. The City reserves the right to reject or accept any bid or proposal that takes exception to the terms and conditions, but must take into account any objections in comparing the bid or proposal to other bids or proposals. Exceptions to the terms and conditions become contractual obligations only upon written acceptance by the City.

**F.** ~~F.~~ Commentary

The following is a list of federal, state, and local agencies of which the City has knowledge that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of contracts:

**FEDERAL AGENCIES:**

Agriculture
  Department of Forest Service
  Soil Conservation Service
Defense
  Department of Army Corps of Engineers
Energy
  Department of Federal Energy Regulatory Commission
Environmental Protection Agency

Department of Health and Human Services
Housing and Urban Development
Department of Solar Energy Conservation Bank
Interior, Department of
Bureau of Sports Fisheries and Wildlife
Bureau of Outdoor Recreation
Bureau of Land Management
Bureau of Mines
Bureau of Indian Affairs
Bureau of Reclamation
Geological Survey
Minerals Management Service
Labor, Department of
Mine Safety and Health Administration
Occupational Safety and Health Administration
Transportation, Department of
Coast Guard
Federal Highway Administration
Water Resources Council

**STATE AGENCIES:**
Administrative Services, Department of
Agriculture, Department of Columbia River Gorge Commission
Consumer & Business Services, Department of Oregon Occupational Safety & Health Division
Energy, Department of
Environmental Quality, Department of
Fish and Wildlife, Department of
Forestry, Department of
Geology and Mineral Industries, Department of
Human Resources, Department of
Land Conservation and Development Commission
Parks and Recreation, Department of
Soil and Water Conservation Commission
State Engineer
State Land Board
Water Resources Board

**LOCAL AGENCIES:**
City Council
County Court
County Commissioners, Board of
Port Districts
Metropolitan Services Districts
County Service Districts Sanitary Districts
Water Districts
Fire Protection Districts

**30.180 AVAILABILITY OF AWARD DECISIONS - CONTRACT RETENTION**

**A.** Contract Documents

A signed purchase order, agreement, or contract, as applicable, shall be executed with the person to whom the contract is awarded.

**B.** Notification to Unsuccessful Bidders

Unsuccessful bidders and proposers will be provided with the notice of intent to award. Tabulations of awarded bids shall be posted on the City's website or may be obtained in accordance with the City's Public Record Request policies.

**C.** Availability of Files

Completed files, other than confidential materials, shall be available for public review at the City in accordance with the City's Public Records policies.

~~**A.**~~**D.** Copies from Files

Copies of material from files may be obtained in accordance with the City's Public Records policies.

~~**B.**~~**E.** Contract Retention

The following requirements on retention of contract documents after award shall apply:

1. For all service contracts the original must be kept for six (6) years after the contract has been completely executed;

2. Capital improvement contracts must be kept a minimum of ten (10) years after substantial completion;

3. Goods contracts must be kept for six (6) years after maturity;

4. Intergovernmental and interagency agreements must be kept a minimum of 10 years after substantial completion; and

5. ~~5.~~ Other purchasing related documents should be retained according to City retention schedules;

~~1.~~6. Any copies of the originals must be kept for two (2) years after maturity in all of the categories listed above.

## 30.185 REQUESTS FOR PROPOSALS

**A.** The City may use the request for proposal process for any contract for which price is not the sole factor for awarding the contract. When the City uses a request for proposal, the solicitation document shall state:

1. The necessary contract terms;

2. The evaluation criteria to be applied in awarding the contract and the role of an evaluation committee, if any;

3. The criteria for awarding the contract, which may include but are not limited to cost, quality, service, experience, expertise, compatibility with existing or future City assets, product reliability, operating efficiency, and expansion potential;

4. Complaint processes and remedies available;

5. The provisions made for vendors to comment on any specifications that they believe limit competition; and

6. The location where sealed written proposals are to be submitted and the date and deadline for submittal.

**B.** All requests for proposals shall be published at least once in a newspaper, journal, trade publication or similar periodical. In deciding where to advertise, the City shall consider what publication is most likely to be read by qualified proposers.

**C.** The City may establish an ad hoc proposal review committee to evaluate any proposal and may provide for an interview of selected proposers as part of the evaluation process. Any use of a proposal review committee or interview process shall be detailed in the request for proposals.

## 30.190 PERFORMANCE AND PAYMENT SECURITY

**A.** Public Improvements Contract

Except in emergencies, when the requirement may be waived, or unless the requirement is exempted under these rules, all persons entering into public improvements contracts with the City will be required to provide:

1. A performance bond in a sum equal to the contract price, and

2. A payment bond in a sum equal to the contract price.

~~1.~~3. Proof that a public works bond with a corporate surety in the amount of $30,000 has been filed with the Construction Contractors Board for contracts subject to Prevailing Wage Rate Law. Public improvement contracts of $10,000 or less are exempt from the bond requirements.

**B.** Other Public Contracts

The City may require performance security for other public contracts. Such requirements shall be stated in the solicitation documents.

**C.** ~~C.~~ Contracts Under $10,000

Performance bonds for a contract under $10,000 shall be utilized only in critical circumstances, so as not to discourage competition.

**D.** ~~D.~~ Requirement for Surety Bond

A surety bond furnished by a surety company authorized to do business in Oregon is the only acceptable form of performance security unless otherwise specified in the solicitation documents.

~~D.~~**E.** Time for Submission

Upon request by the City, the apparent successful bidder or proposer must furnish the required performance bond within ten days of contract award. Prompt submittal of the performance bond is required to ensure timely project initiation. Failure to furnish the bond prior to the deadline shall result in rejection of the bid or proposal, forfeiture of bid security, and award to the next lowest responsible bidder or next highest-scoring proposer.

~~E.~~**F.** Claims on Payments Bonds

Claims on payment bonds shall comply with ORS 279C600 to 279C.625 and Section 40.060.

## 30.195 RIGHT TO AUDIT RECORDS

**A.** Records Maintenance; Access

Contractors and subcontractors shall maintain all fiscal records relating to public contracts in accordance with generally accepted accounting principles. In addition, contractors and subcontractors shall maintain any 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 public contract accessible to the City at reasonable times and places, regardless whether litigation has been filed as to such claims.

**B.** Audit of Cost or Pricing Data

The City may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data according to the terms of a contract to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, for which cost or pricing data are required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

**C.** Contract Audit

The City shall be entitled to inspect, examine, copy, and audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the

prime contract and by the subcontract for a period of three (3) years from the date of final payment under the subcontract, 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.

## 30.200 RIGHT TO INSPECT PLANT

**A.** Time for Inspection

The City may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor that is related to the performance of any contract awarded.

**B.** Access to Plant or Place of Business

As a condition of bidding, bidders agree that the City may enter a contractor's or subcontractor's plant or place of business during normal business hours for the following purposes:

1. Inspect and/or test supplies or services for acceptance by the City pursuant to the terms of the bid; or

2. Investigate in connection with a bidder's application, a minority business certification, or bidder disqualification.

**C.** Contractual Provisions

Contracts may provide that the City may inspect supplies and services at the contractor's or subcontractor's facility and perform tests to determine whether they conform to the bid documents, or, after award, to contract requirements, and are therefore acceptable. Such inspections and tests shall be conducted in accordance with the terms of the contract.

**D.** Procedures for Trial Use and Testing

The City may establish operational procedures governing the testing and trial use of equipment, materials, and the application of resulting information and data to specifications or procurements.

**E.** Conduct of Inspections

1. Inspectors

   Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No change of any provision of the specifications or the contract may be required by the inspector without written authorization of the City, unless otherwise specified in the solicitation documents. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirement of the contract.

2. Location

   When an inspection is made in the plant or place of business of a contractor or

subcontractor, such contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

**3.** Time of Testing or Inspection

Inspection or testing of supplies and services performed at the plant or place of business of any contractor or subcontractor shall be performed at reasonable times during normal business hours.

**F.** Inspection of Construction Projects

On-site inspection of construction shall be performed in accordance with the terms of the contract.

## 30.205 CONTRACT CANCELLATION AND TERMINATION PROCEDURES

**A.** A contract may be canceled by the City for any violation of the provisions of the contract or for violation of the certification of non-discrimination against minority, women, and emerging small business enterprises.

**B.** The City may terminate any contract if insufficient funds are appropriated to complete the contract.

**C.** No cancellation of a public contract shall, unless limited by the terms of the particular contract, restrict or abrogate any other remedy available to the City that is provided either by law or under the particular contract.

**D.** The City shall provide the contractor written notice of the grounds for cancellation or termination and of its intention to cancel the contract or terminate the contractor's performance. ~~/~~If the contractor provided a performance and payment bond, the surety shall also be provided with a copy of the notice of contract cancellation or contractor termination. The notice shall include the effective date of the intended cancellation or termination, the grounds for cancellation or termination and notice of the amount of time (if any) in which the City will permit the contractor to correct the failure to perform. The public contract may provide contract cancellation or contractor termination procedures that are different from or in addition to, those provided in this rule.

**E.** If the contractor has provided a performance and payment bond, the City may afford the contractor's surety the opportunity, upon the surety's receipt of a contractor termination notice, to provide a substitute contractor to complete performance of the contract. Performance by the substitute contractor shall be rendered pursuant to all material provisions of the original contract, including the provisions of the performance and payment bond. Such substitute performance does not involve the award of a new public contract and shall not be subject to competitive procurement requirements.

# PCR 40.000 - PUBLIC IMPROVEMENT CONTRACTS

## 40.010 APPLICATION

In addition to the requirements set forth in Section 30 of these rules, the following rules apply to public improvement contracts. The requirements in Section 40 are intended to be complementary to those in Section 30, with the rules in Section 40 supplementing the Section 30 requirements, where necessary, to meet the City's needs when administering contracts for public improvements.

## 40.015 COMPETITIVE BIDDING

Except as otherwise specifically permitted by these rules, public improvement contracts shall be awarded by competitive bidding. If the public improvement contract includes design aspects, including value engineering under a CM/GC covered project, the City may award the contract by a competitive proposal process.

## 40.020 FIRST TIER SUBCONTRACTOR NOTICE

If the public improvement contract may be for more than $100,000, the solicitation documents must provide notice that the contractors must disclose first-tier subcontractors who will furnish labor or materials greater than five percent of the total bid or $15,000, whichever is greater, or $350,000 regardless of the percentage of the total bid within two working hours after the deadline for bid submission. The disclosure must state the name of each subcontractor and the category of work the subcontractor will perform.

## 40.025 FIRST TIER SUBCONTRACTOR DISCLOSURE

**A.** Bidders for public contracts with a value of more than $100,000 must submit a first-tier contractor disclosure sheet within two hours of the deadline for submitting a bid. The disclosure sheet must list all first-tier subcontractors who will furnish labor or materials greater than five percent of the total bid or $15,000, whichever is greater, or $350,000 regardless of the percentage of the total bid. The disclosure must state the name of each subcontractor, the category of work the subcontractor will perform and the dollar value of each subcontract. If no first-tier subcontractor meets the threshold level for disclosure and the bid price is more than $100,000, the disclosure sheet must still be submitted with the information that no subcontractors meet the threshold level for disclosure.

**B.** Bid and proposals for public improvement contracts with a value of greater than $100,000 for which a first-tier subcontractor disclosure is not submitted within two hours of the submittal deadline shall be considered non-responsive.

**C.** The closing for submission of bids subject to first-tier subcontractor disclosure shall be on Tuesday, Wednesday or Thursday between 2 and 5 pm.

**D.** First tier subcontractors may be substituted if only in compliance with ORS 279C.585.

**E.** The City may require first-tier subcontractor disclosure in any invitation to bid, even if disclosure is not otherwise required by statute or these rules.

## 40.030 BID EVALUATION AND AWARD

**A.** General

Unless exempted by these rules, a public improvement contract, if awarded, is to be awarded to the lowest, responsive and responsible bidder.

**B.** Special Requirements

The solicitation documents shall set forth any special requirements and criteria, which will be used to determine the lowest, responsive and responsible bidder. No bid shall be evaluated for any requirement or criterion that is not disclosed in the solicitation documents or City regulation.

**C.** Bid Evaluation and Award

The evaluation format for competitive bid pricing can be lump sum, unit price, or a combination of the two.

**1.** Lump sum

If the bid form includes a lump sum base bid, plus additive or deductive alternates, the total bid price, for the purpose of comparing bids, shall be the total sum computed from adding or deducting alternates, as selected by the City, to the base bid. ~~/~~If the alternates, or if the City has selected no additive or deductive alternates for award, bids shall be compared on the basis of lump sum prices, or lump sum base bid prices, as applicable.

**2.** Unit Price

If the bid includes unit prices and extensions for estimated quantities, the total bid price, for the purpose of comparing bids, will be the total sum computed from multiplying the bidder, with due adjustments being made for additive or deductive alternates, if any, selected for award. Note: In case of a conflict between a unit price and the corresponding extended amount, the unit price shall govern.

**3.** Combination Lump Sum and Unit Price

The City shall select a combination of factors for purposes of bid evaluation and contract award and use the methods described in (a) and (b) to compute and compare bids. Note: In case of a conflict between a unit price and the corresponding extended amount, the unit price shall govern.

**D.** Proposal Evaluation and Award

If a selection method other than competitive bids is authorized by these rules for a public improvement, proposals will be evaluated to determine which proposer offers the best solution to the City in accordance with the evaluation criteria set forth in the solicitation documents and in the City's rules. The solicitation evaluation criteria may include, but are not limited to, cost, quality, relevant experience, service, performance history on other private and public contracts, experience and availability of key personnel, adequacy of equipment and physical plant, financial wherewithal, sources of supply, and references. Evaluation factors need not be precise predictors of actual future

costs and performance, but, to the extent possible, such evaluation factors shall:

1. Be reasonable estimates based on information available to the City;

2. Treat all proposals equitably;

3. Recognize that public policy requires acquisitions and public improvements to be accomplished at the least cost.

**E.** No assignment or transfer of contract rights

A contractor shall not assign, sell, or transfer rights, nor delegate responsibilities under a public contract either in whole or in part, without first obtaining the City's prior written consent. Such written consent shall not relieve a contractor of any obligations under a public contract, and any transferee shall be considered the agent of the contractor and bound to abide by all provisions of the public contract. Except in the event of a novation, if the City consents in writing to an assignment, sale, or transfer of the contractor's rights and responsibilities, the contractor shall remain ultimately liable to the City for complete performance of the public contract as if on such assignment, sale, or transfer had occurred.

## 40.035 CONTRACT CANCELLATION PROCEDURES

**A.** Termination Due to Circumstances Beyond the Control of the Contractor

**1.** Reasons for Termination

The City may, in its sole discretion, by written order or upon written request from the contractor, terminate the contract or a portion thereof if any of the following occur:

a. The contractor is prevented from completing the work for reasons beyond the control of the City;

b. Completion of the project is beyond the control of the contractor;

c. For any reason considered by the City to be in the public interest (other than a labor dispute or reason of any third party judicial proceeding relating to the work other than a suit or action filed in regards to a labor dispute). These reasons may include, but are not necessarily limited to, non-availability of materials, phenomenon of nature of catastrophic proportions or intensity, executive orders of the President related to national defense, congressional or state acts related to funding;

d. Any third party judicial proceeding relating to the work other than a suit or action filed in regards to a labor dispute;

e. ~~/~~If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the public works;

f. The City does not have funds budgeted or available to complete the contract; or

g. Any other reason allowed as a basis for termination under the contract.

~~1.~~2. Payment When Contract is Terminated

When the contract, or any portion thereof, is terminated before completion of all items of work in the contract, payment will be made for the actual items of work completed under the contract, or by mutual agreement, for items of work partially completed. No claim for loss of anticipated profits will be allowed.

~~2.~~3. Responsibility for Completed Work if Contract Terminated

Termination of the contract or a portion thereof shall not relieve the contractor of responsibility for the work completed, nor shall it relieve the surety of its obligation for any claims arising from the work performed.

**B.** Termination of Contract for Default

**1.** Declaration of Default

The City may, after giving the contractor or the surety seven (7) days' written notice and an opportunity to cure deficient performance, terminate the contractor's performance for any reasonable cause, including but not limited to those set forth in subsection 2(a)(1) to (6) of this rule. Upon such termination, the City may immediately take possession of the premises and of all materials, tools and appliances thereon as well as all other materials, whether on the premises or not, on which the contractor has received partial payment. The agency may finish the work by whatever method it may deem expedient.

a. If the contractor should persistently or repeatedly refuse to or fail to supply an adequate number of properly skilled workers or proper materials for the efficient execution of the project; or

b. If the contractor should fail to make prompt payment to subcontractors for material or labor, or persistently disregard laws, ordinances, or the instruction of the City, or otherwise be guilty of a substantial violation of any provision of the contract; or

c. If the Contractor should voluntarily or involuntarily seek protection under the U.S. Bankruptcy Code and its Debtor in Possession or Trustee for the estate fails to assume the contract within a reasonable time; or

d. If the contractor should make a general assignment for the benefit of the contractor's creditors; or

e. If a receiver should be appointed on account of the contractor's insolvency; or

f. If the contractor is otherwise in material breach of any part of the contract.

~~1.~~2. Required Response to Declaration of Default

If the above action is taken, the contractor or the surety shall provide the City with immediate and peaceful possession of all of the materials, tools, and appliances located on the premises, as well as all other materials whether on the premises or not, on which contractor has received any progress payment. Further, the contractor shall not be entitled to receive any further payment until the work is completed. On the completion of the work, determination shall be made by the City of the total amount under the terms of the contract, had the contractor completed the work. If the difference between said total amount and the sum of all amounts previously paid to the contractor, which difference will hereinafter be called the "unpaid balance," exceeds the expense incurred by the City in completing the work, including expense for additional managerial and administrative services, such excess will be paid to the contractor, with the consent of the surety. ~~i~~If, instead, the expense incurred by the City exceeds the unpaid balance, the amount of the excess shall be paid to the City by the contractor or the surety.

~~2.~~3. Expense of Completion

The expense incurred by the City shall be as determined and certified by the City.

~~3.~~4. Substitution of Contractor

As provided in PCR 30.205, termination of the contractor and substitution of another contractor to complete the work does not constitute the award of a new public contract and shall not be subject to the provisions of ORS 279A.015 (5), ORS 279B.050 to ORS 279B.085, or ORS 279C.300 to ORS 279C.470.

~~4.~~5. Refusal to Perform

In addition to and apart from the above-mentioned right of the City to terminate the employment of the contractor, the contract may be canceled by the City for any willful failure or refusal on the part of the contractor to perform faithfully the contract according to all of its terms and conditions; however, in such event neither the contractor nor the surety shall be relieved from damages or losses suffered by the City on account of the contractor's breach of contract.

~~5.~~6. Remedies are Cumulative

The City may, at its discretion, avail itself of any or all of the above rights or remedies without prejudice or preclude the City from subsequently invoking any other right or remedy set forth above or elsewhere in the contract.

## 40.040 RETAINAGE

**A.** Retainage of Five Percent

The City will retain amounts from progress payments so that the total value of all amounts retained will not exceed 5 percent of the value of completed work. ~~/~~If the contract work is 50 percent completed and the work is progressing satisfactorily, the retainage may be reduced on the remaining

progress payments. Any reduction or elimination of retainage shall be allowed only upon written application of the contractor, which application shall include written approval of the contractor's surety; except that when the contract work is 97-1/2 percent completed, the City may without application by the contractor, reduce the retained amount to 100 percent of the value of the contract work remaining to be done. If retainage has been reduced or eliminated, the City reserves the right in protecting its interests to reinstate at any time retainage from further progress payments.

**B.** Alternatives to Cash Retainage

In lieu of cash retainage to be held by the City, the contractor may select one of the following options:

**1.** Deposit of Securities

The contractor may deposit bonds or securities with the City or in any bank or trust company to be held for the benefit of the City. In such event, the City shall reduce the retainage in an amount equal to the value of the bonds and securities. This reduction in retainage will be made in the progress payments made subsequent to the time the contractor deposits the bonds and securities.

The value of the bonds and securities will be determined periodically by the City and the amount retained on progress payments will be adjusted accordingly. The bonds and securities deposited by the contractor shall be fully assigned to the City or be payable to the City on demand and shall be of a character approved by the Finance Director, including but not limited to the following:

a. Bills, certificates, notes or bonds of the United States.

b. Other obligations of the United States or its agencies.

c. Obligations of any corporation wholly owned by the Federal Government.

d. Indebtedness of the Federal National Mortgage Association.

e. Time certificates of deposit or savings account passbooks issued by a commercial bank, savings and loan association, or mutual savings bank, duly authorized to do business in Oregon.

f. Corporation bonds rated A or better by a recognized rating service.

g. General obligation bonds of the State of Oregon or any political subdivision thereof.

h. General obligation improvement warrants issued pursuant to ORS 287.502.

i. Irrevocable letters of credit from a bank doing business in Oregon.

At the time the City determines that all requirements for the protection of the City's interest has been fulfilled, all bonds and securities deposited as above provided will be released to the

contractor.

**2.** Deposit in Interest-Bearing Accounts

Upon written request of the contractor, the City shall deposit any amounts withheld as retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association for the benefit of the City. Interest earned on such account shall accrue to the contractor.

**3.** The City may, at its discretion, allow the contractor to deposit a surety bond in a form acceptable to the City in lieu of all or a portion of funds retained to be retained. The contractor shall accept like bonds from subcontractors and suppliers when the City allows surety bonds for retainage.

**C.** Recovery of Costs

If the City incurs additional costs as a result of the exercise of any of the options for retainage described herein, the City may recover such costs from the contractor by reduction of the final payment. As work on the contract progresses, the City shall, upon request, inform the contractor of all accrued costs.

## 40.045 PROGRESS PAYMENTS

**A.** Request for Progress Payments

At a regular time each month, the contractor shall, if required by the contract documents, submit to the City a request for payment based upon an estimate of the amount of work completed and of the value of acceptable material to be incorporated in the completed work which has been delivered and acceptably stored. Upon verification and approval of the City, the sum of these values will be referred to the "value of completed work." With these estimates as a base, a progress payment will be made to the contractor, which shall be equal to the value of completed work, less such amounts as may have been previously paid, less such other amounts as may be deductible or as may be owing and due to the City for any cause, and less an amount to be retained in protection of the City's interests.

**B.** Progress Payments Do Not Constitute Acceptance of Work

Progress payments shall not be construed as an acceptance or approval of any part of the work covered thereby, and they shall in no manner relieve the contractor of responsibility for defective workmanship or material.

**C.** Estimates for Progress Payments

The estimates upon which progress payments are based are not represented to be accurate estimates, and all quantities shown therein are subject to correction in the final estimate. If the contractor uses such estimates as a basis for making payments to subcontractors, this is at the contractor's own risk, and the contractor shall bear all loss that may result.

**D.** Contractor Certified Payroll Payment Withholding

The City shall withhold 25% of any amount owed to a contractor if the contractor does not file certified payroll records with the City along with any invoice for payment on any project covered by Prevailing Wage Rate Law.

## 40.050 FINAL INSPECTION

**A.** Notification of Completion

When the contractor determines that all construction work on the project has been completed, the contractor shall so notify the City in writing. The City shall make an inspection of the project and project records within fifteen (15) days of receiving said notice. ~~/~~If, at such inspection, all construction provided for and ordered under the contract is complete and satisfactory to the City, and all certifications, bills, forms, and documents have been submitted properly, such inspection shall constitute the final inspection.

~~A.~~**B.** Instructions to Complete the Work

If, however, at any inspection, any work in whole or in part is found unsatisfactory, or it is found that all certifications, bills, forms, and documents have not been submitted properly, the City shall within fifteen (15) days provide instructions to the contractor on outstanding requirements to complete the project. At such time as the contractor determines full compliance with, and the execution of such instructions, the contractor shall notify the City in writing. The City shall make another inspection within fifteen (15) days after such notice, and this inspection shall constitute the final inspection provided construction work has been completed satisfactorily.

~~B.~~**C.** Acknowledgment of Acceptance

Upon satisfactory completion of all work required under the contract, the City shall acknowledge acceptance of the work in writing.

## 40.055 FINAL ESTIMATE AND FINAL PAYMENT

**A.** Submission of Final Estimate

As soon as practicable after final inspection of the work under the contract, if unit prices were applicable, the City shall prepare a final estimate of the quantities of the various classes of work performed. Following a determination of the total amount due the contractor, and following final acceptance of the work by the City, final payment shall be made to the contractor.

**B.** Set-off of Prior Payments

~~B.~~ All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

**C.** Retainage

Any retainage help by the City shall be included in and paid to the contractor as part of a contract's final payment.

**D.** Interest

In accordance with ORS 279C.570 (8), the City shall pay a contractor interest at the rate of 1.5 percent per month on the final payment due to a contractor, with the interest to commence thirty (30) days after the work under the contract has been completed and accepted and shall run until the date when the final payment is paid to the contractor.

## 40.060 CLAIMS FOR UNPAID LABOR OR SUPPLIES

**A.** Right of Action

A person claiming to have supplied labor or materials for work on a public improvement contract led by the City for which the person has not been paid by the prime contractor or any subcontractor, has a right of action on the contractor's payment bond. This right arises if the person has not been paid in full and has given written notice of a claim within 120 days of last providing labor or furnishing materials, or within 150 days of providing labor or furnishing materials if the claim is for a required contribution to a fund of any employee benefit plan.

**B.** Notice of Claim

**1.** To initiate a claim against the contractor's bond, a person should file a Notice of Claim in the form and manner attached as PCR 40.061 - Exhibit A. Such notice must be given to the contractor and the City.

**2.** Any notice of claim should include the following information:

a. Name and address of the claimant;

b. Name of prime contractor;

c. Title of project and contract date;

d. Name of the City;

e. Name of bonding company (may be obtained from City); and

f. Name of contractor or subcontractor to whom labor or material supplied.

**C.** Response to Notice of Claim

Upon receipt of such Notice of Claim, the City shall:

**1.** Send an acknowledgment to claimant;

**2.** Send a copy of the notice to the prime contractor; and

3. File a copy of the Notice with the bonding (surety) company.

**D.** Referral to Surety Company

If the contract has been completed and all funds disbursed to the prime contractor, all claims shall be referred to the surety company for resolution. The City shall not arrange for second payments directly to subcontractors or suppliers for work already paid for by the City.

**E.** Discretionary Payment of Claim

If the contract is still in force, the City may pay a valid claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the contractor under the contract.

**F.** Liability of Claim

If the City chooses to make a payment as provided in Subsection E, the contractor or the contractor's surety shall not be relieved from obligation with respect to any unpaid claims.

## 40.061 EXHIBIT A

To: (insert name of the public body)

NOTICE IS HEREBY GIVEN that the undersigned, (insert name of subcontractor or supplier), a (corporation, partnership, sole proprietorship, etc.), as claimant, has a claim for (labor performed by the claimant, materials supplied by the claimant, etc.), generally consisting of (brief description) in the sum of $_____ against the payment bond taken from (name of prime contractor), as principal, and (name of bonding company if known), as surety, for the construction of the (title or description of project). The material or labor was supplied to (name of contractor).

(Insert a brief description of the work concerning which the bond was taken.)

DATED this _____ day of _____ 20_____.

By
(claimant's name)

## 40.065 PLANNING FOR PUBLIC IMPROVEMENTS

The City will prepare a file with the Commissioner of the Bureau of Labor and Industries a list of planned public improvements at least 30 days before adoption of the City's budget and otherwise comply with ORS 279C.305.

## 40.070 PREVAILING WAGE LAWS

Contractors shall comply with all Prevailing Wage Rate Laws (ORS 279C.800 to 279C.870 or the Davis- Bacon Act, 40 U S 276a) if applicable.

## PCR 50.000 - WAIVER OF SECURITY (BID, PERFORMANCE AND PAYMENT BONDS)

**(Also see PCR 30.055)**

### 50.010 BID SECURITY REQUIREMENTS

The City shall require bid security unless an exception under the Public Contracting Code or these rules apply. The City may, in its discretion, waive bid security requirements for contracts other than those for public improvements. In its discretion, the City may accept blanket bid bonds. The City may require proposal security bonds.

### 50.015 CONTRACTS UNDER $10,000

The City may, in its discretion, waive the bid security and performance bond requirements if the amount of the contract is less than $10,000.

### 50.020 EMERGING SMALL BUSINESS CONTRACTS UNDER $100,000

**A.** The City may, in its discretion, waive bid security requirements and performance bond requirements when the public improvement project:

**1.** Has estimated direct construction costs not exceeding $100,000;

**2.** Is being undertaken through a program where the bidders are drawn exclusively from a list of certified Emerging Small Businesses maintained by the Advocate of Minority, Women and Emerging Small Business; and

**3.** The City has been provided funds by the legislature for the purpose of assisting Emerging Small Businesses.

**B.** The City may waive bid security requirements and/or performance bond requirements under the following conditions:

**1.** There exists an emerging small business account or like source of funds containing an unexpended and unobligated balance;

**2.** The City has authority to encumber and make payments from the account; and

**3.** The City encumbers an amount in the account to cover the total cost of each project wherein the bid security and/or the performance bond is waived.

## PCR 60.000 - PROPERTY DISPOSITION

### 60.010 SURPLUS PERSONAL PROPERTY

**A.** Personal property owned by the City and under the dollar value of $500 (per item or per lot if all the same equipment) may be disposed of with the approval of any department head or the City

Manager. Personal property that exceeds that dollar value may be disposed of only after being declared surplus by the City Manager. The method of disposal will be determined based on condition, value, demand, and/or use.

**B.** Personal property may be declared surplus by the City Manager or designee if it is scheduled for replacement in an adopted budget or it is no longer necessary to provide City services.

## 60.015 AUCTION SALES OF PERSONAL PROPERTY

Personal property may be sold at auction if the City determines that an auction will probably result in the best net return for the City. Auctions that are widely publicized, including internet auctions, do not require notice by the City.

## 60.020 SALES OF PERSONAL PROPERTY

**A.** When the current market value per item (or by lot if all the same equipment) is estimated to be more than $25,000, the personal property must be offered for competitive bid and be advertised in a newspaper of general circulation in the City. The City at its discretion may choose between sealed written bids or a public auction. ~~/~~If no bids are received or if a determination is made that the market value of the property exceeds the offer of the highest responsible bidder, all bids may be rejected, and the City may negotiate a sale subject to the following conditions:

**1.** An appraisal of the market value of the property is obtained and documented, and the negotiated sale price exceeds the market value; or

**2.** The sale amount exceeds the highest bid received through the bidding or auction process.

**B.** The City may sell personal property by a negotiated sale if the value of the property is estimated to be less than $25,000 (per item or per lot if all the same equipment) and the City has determined that a sale without competitive bidding will result in at least as much net revenue as would a competitive bidding process. The City shall endeavor to get as many quotes as is reasonable under the circumstances (normally at least three) and shall negotiate to maximize the proceeds for the City.

## 60.025 LIQUIDATION SALES OF PERSONAL PROPERTY

The City may sell personal property through a commercially recognized third party liquidator if the City has determined that a liquidation sale will result in increased net revenue and the selection of the liquidator was conducted by the competitive request for proposal process under these rules.

## 60.030 DONATIONS OF PERSONAL PROPERTY

**A.** The City may transfer personal property, including recyclable or reclaimed materials, without remuneration or only nominal remuneration without competitive bids to the following entities:

**1.** Another public agency;

**2.** Any sheltered workshop, work activity center or group care home which operates under

contract or agreement with, or grant from, any state agency and which is certified to receive federal surplus property; or

**3.** Any recognized non-profit activity, which is certified to receive federal surplus property.

**B.** The City may donate or sell, without competitive bids, surplus personal property to recognized private, non-profit social or health service activities, subject to the following conditions:

**1.** A determination has been made that the property is not needed for other public purposes; and

**2.** If the property has a current market value of $500 or more (per item or per lot if all the same equipment), the donation or sale shall:

a. Be approved by the City Manager or designee; and

b. Be documented by the City to be clearly in the public interest.

**C.** The City shall maintain a record of all transfers, donations, or sales authorized by sections A and B of this rule.

## 60.035 TRADE OF PERSONAL PROPERTY

The City may trade personal property owned by the City to other government agencies or to other entities provided the following conditions apply:

**A.** Trades to other government agencies are exempt from public bidding by PCR 10.010A.1; however, such trades must be approved by the City Manager.

**B.** Trades of personal property with parties other than government agencies must proceed as follows:

**1.** The market value of both the item to be traded and the item requested must be documented.

**2.** The proposal to trade an item for another item must be made available to an adequate number of potential vendors to encourage competition.

**3.** Such trades must be approved by the City Manager.

## 60.040 DISPOSAL OF SURPLUS PERSONAL PROPERTY MEETING HAZARDOUS WASTE DEFINITIONS

If personal property has been declared surplus by the City and can be defined as a hazardous material or waste, including electronic material, or e-waste, the City may appropriately recycle or dispose of the property without competitive bids subject to the following conditions:

**A.** A determination has been made that the property is not needed for other public purposes,

**B.** If the property has a current market value of $500 or more (per item or per lot if all the same equipment), staff made a good faith effort to locate a seller and documentation of the effort will be made part of the City's files.

## PCR 70.000 - PERSONAL SERVICES CONTRACTS

### 70.010 PERSONAL SERVICES CONTRACTS

**A.** Personal service contracts are not "public contracts" subject to formal competitive process under the Oregon Public Contracting Code. This Section of the PCRs describes a method for distinguishing between personal service contracts and public contracts, particularly service contracts, and provides examples of contracts or classes of contracts which are or are not personal service contracts.

**B.** The determination whether a contract is a public contracts or a personal service contract shall be based on the following:

**1.** Whether the City has developed or is reasonably able to develop reasonably adequate design and/or performance specifications and whether selecting a contractor on the basis of lowest price and meeting minimum specifications would likely meet the City's needs. If the tasks to be performed can reasonably be performed based solely on compliance with minimum specifications, then the tasks should be performed pursuant to a public contract awarded by a competitive bidding process. Conversely, if the City is reasonably unable to develop adequate design and/or performance specifications but must instead have the assistance of the contractor's training, knowledge, and expertise to develop a scope of work statement and selecting the contractor on the basis of lowest price would be unlikely to meet the City's needs, then the tasks would most appropriately be performed under a personal service contract.

**2.** Whether selecting the contractor on the basis of qualifications rather than lowest price will result in the City obtaining the best value for its money.

**3.** A personal service contract is appropriate where the contract is awarded primarily on the basis of the contractor's qualifications, including but not limited to, such criteria as experience, training, knowledge, and expertise, technical skill, creativity, artistic ability, performance history, and demonstrated ability to exercise sound professional judgment. Price will be a secondary criterion for awarding a personal service contract.

**4.** A personal service contract is not appropriate where price is or should be the primary or a major selection criterion.

**C.** Personal service contracts may include, but are not limited to, the following:

**1.** Contracts for services performed as an independent contractor in the professional capacity, including but not limited to the services of an accountant; attorney; architectural or land use planning consultant; physician or dentist; registered professional engineer; appraiser or surveyor; aerial photographer; timber cruiser; broadcaster; or data processing consultant.

2. Contracts for such services as an artist in the performing of fine arts, including but not limited to photographer, filmmaker; painter; weaver; or sculptor.

3. Contracts for services of a specialized creative and research oriented, noncommercial nature.

4. Contracts for educational and human custodial care services.

**D.** The following are NOT personal service contracts:

1. Contracts, even though in a professional capacity, if predominately for a product, e.g., a contract with a landscape architect to design a garden is for personal services, but a contract to design a garden and supply all the shrubs and trees is predominately a tangible product.

2. A service contract, including a contract with a temporary service or personnel agency, to supply labor which is of a type that can generally be done by any competent worker, e.g., data entry, janitorial, security guard, crowd management, crop spraying, laundry, and landscape maintenance service contracts

3. Contracts for trade related activities considered to be labor and material contracts.

4. Contracts for services of a trade-related activity, to accomplish routine, continuing, and necessary functions, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures.

## 70.015 SCREENING AND SELECTION POLICY FOR PERSONAL SERVICES CONTRACTS OTHER THAN ARCHITECTS, ENGINEERS, LAND SURVEYORS, PHOTOGRAMMETRISTS, TRANSPORTATION PLANNERS, OR RELATED SERVICES

It is the City's policy to select as expeditiously as possible the best qualified consultant available, consistent with financial considerations. The selection procedures in this section shall be used to select the personal services contractors, except where ORS 279C.110 requires a different procedure. The selections procedures do not apply to the appointment or hiring of City officials and employees, to employment or services contracts with City officials and employees (except if providing services outside the scope of employment or official duties), or to collective bargaining agreements.

**A.** Formal Selection Procedure

This procedure shall be used for personal service contracts when the total cost of the contract exceeds $100,000. The City may elect to use the Formal Selection Procedure for any personal service contract, regardless of price.

1. Announcement

The City will make at least one public announcement of its need for personal services in an appropriate trade periodical or newspaper of general circulation. The announcement shall include a description of the proposed project, the scope of the services required, project completion dates, and a description of any special requirements, if present. The

announcement shall invite qualified prospective contractors to indicate to the requesting department their interest in performing the services required. The announcement will specify a closing date by which the statement must be received by the appropriate department.

**2.** Application

Prospective contractors must submit a statement which describes their capabilities, credentials, and performance data sufficient to establish their qualification for the project.

**3.** Initial Screening

The Department Head or designee shall evaluate the qualifications of all applicants responding to the announcement by the closing date and select from among the respondents a minimum of three prospective contractors whose statements evidence the highest level of qualification. Should fewer than three (3) statements be received, then each prospective contractor submitting statements that meet the minimum qualifications will be interviewed.

**4.** Final Selection Procedure

a. Interviews

The Department Head or designee may hold discussions with the finalists selected for initial screening. Applicant capability, experience, and compensation requirements shall determine the department's final selection. The interviews may be in person or by phone.

b. Award of Contracts

The Department Head or designee shall make a recommendation to the Board for award of the contract based on the written materials and the interview evaluation. The designee may be a committee.

**B.** Informal Selection Procedure

**1.** This procedure may be used when the estimated fee to the contractor does not exceed $100,000.

**2.** The department will contact a minimum of three (3) prospective contractors with which it has had previous successful experience or which are known by the department to be qualified to offer the sought-after services. A projected fee will be requested and a selection made by the Department Head or designee based upon the consultant's capability, experience, project approach, and compensation requirements.

**C.** Direct Appointment Procedure

**1.** A qualified consultant may be appointed directly from the City's current list of consultants, another public contracting agency's current list of consultants pursuant to an interagency or

intergovernmental agreement entered into in accordance with ORS Chapter 190; or from consultants offering the necessary services that the City reasonably can locate. Direct appointment procedure may be used when:

a. The consultant's estimated fee does not exceed $20,000; or

b. When the project consists of work that has been substantially described, planned, or otherwise previously studied or rendered in an earlier departmental contract, provided that the original selection procedure used for the project was a formal procedure and the consultant's estimated fee does not exceed $100,000.

**2.** A direct appointment shall be competitive to the extent practicable and may be based on the consultant's availability, capabilities, staffing experience, compensation requirements and the project's location.

**D.** Emergency Appointment Procedure

Nothing in the rule shall be inferred to prohibit or otherwise impede the Department Head's or designee's right to make direct consultant appointments when conditions require a prompt action to protect life or property. In such instances, the recommended appointment and a written description of the conditions requiring the use of this appointment procedure shall be submitted by the Department Head or designee to the City Manager or designee for action. The City Manager or designee will determine if an emergency exists, declare the emergency, and when appropriate, approve the appointment.

**E.** Responsible Parties' Actions

**1.** Professional Consultants

Submit qualifications, credentials, and performance data relating to their capabilities to the appropriate division in response to project announcement.

**2.** Division/Department

a. Determine that the work on a project requires the services of a consultant.

b. Announce project as required by this section.

~~c. Request the City Manager's approval of the required actions.~~

~~d.~~c. Determine appropriate selection/appointment procedure.

~~e.~~d. Select consultant/candidates as specified under this rule.

~~f.~~e. Interview the top candidates and make the final selection.

~~g.~~f. Execute contracts and awards to consultants, with the Local Contract Review Board and City Manager's prior approval.

~~h.~~g. Maintain a file on the selection process, including:

1) The method and copy of the announcement.

2) The names of firms/individuals and cost estimates considered.

3) A justification of need for the contract.

4) The basis for selection.

5) The means by which rates were established.

6) How reasonableness of price was determined.

7) A copy of the resulting contract.

**3.** City Manager

a. Approves each project's scope and budget as necessary.

b. Makes direct and emergency appointments as required.

c. Approves/disapproves Personal Services Contract and all subsequent amendments unless the amount of the contract requires the Board's approval.

## 70.016 SCREENING AND SELECTION POLICY FOR ARCHITECTS, ENGINEERS, LAND SURVEYORS, PHOTOGRAMMETRISTS, TRANSPORTATION PLANNERS, AND RELATED SERVICES

It is the City's policy to select as expeditiously as possible the best qualified consultant available, consistent with financial considerations. The selection procedures in this section shall be used to select architects, engineers, land surveyors, photogrammetrists, transportation planners, and related services. These selection procedures do not apply to personal service contracts for other professionals (see 70.015), nor do they apply to the appointment or hiring of City officials and employees, to employment or services contracts with City officials and employees (except if providing services outside the scope of employment or official duties), or to collective bargaining agreements.

**A.** Definitions

**1.** "Architect" means a person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms "architect," "licensed architect" and "registered architect."

**2.** "Engineer" means a person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002 (2).

3. "Land surveyor" means a person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002 (5).

4. "Photogrammetrist" has the meaning given that term in ORS 672.002.

5. "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 improvement projects, 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.

6. "Transportation planning services" means transportation planning services for projects that require compliance with the National Environmental Policy Act, 42 U.S.C. 4321 et seq.

**B.** Formal Selection Procedure

This procedure shall be used for personal service contracts for when the estimated value of the contract exceeds $250,000. The City may elect to use this Formal Selection Procedure for any personal service contract, regardless of price. The City may elect to limit the pool of vendors eligible to submit propels to those that are on the City's Professional Services qualified list.

1. Announcement.

   The City will make at least one public announcement of its need for personal services in an appropriate trade periodical or newspaper of general circulation. The announcement shall include a description of the proposed project, the scope of the services required, project completion dates, a description of any special requirements, if present, and the criteria, in sufficient detail and with points assigned, which will be used to rank the submitted proposals. No form of compensation (proposed cost, hourly rates, number of staff hours, or others) may be used as criteria nor may the City ask proposers to submit any pricing information. The announcement shall invite qualified prospective contractors to indicate to the requesting department their interest in performing the services required and shall specify that compensation requirements shall be submitted only upon successful completion of the qualifications based selection of candidates. The announcement will specify a closing date by which the statement must be received by the appropriate department.

2. Proposals

   Prospective contractors must submit a proposal which describes their capabilities, credentials, and performance data sufficient to establish their qualification for the project. No form of compensation shall be submitted with a prospective contractor's proposal.

**3.** Screening and Final Ranking

The City's selection team (or project team) shall evaluate the qualifications of all applicants responding to the announcement by the closing date. The City may elect to interview the top candidates. If the City elects to do so, points shall be awarded to the interview process as additional criteria. The selection team shall, at the end of interviews (or after reviews if interview process is not selected), rank the firms on their final score based on the listed criteria. The City shall use this ranking to begin the negotiation process. All firms that submitted a proposal shall receive notice from the City of the rankings.

**4.** Negotiation

The City shall enter into negotiations with the top ranked consultant regarding pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead. The City and the selected consultant shall discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to, compensation level and performance schedule, based on the scope of services. The compensation level paid must be reasonable and fair to the contracting agency as determined solely by the City. Authority to negotiate a contract under this section does not supersede any provision of ORS 279A.140 or 279C.520.

If the City and the top ranked firm are unable to come to a negotiated price for the project, the City shall move to the second ranked firm and begin negotiation. This process shall continue until the City and a ranked consultant come to an agreed upon price for the work. This negotiated price shall be presented to the Local Contract Review Board for approval. The contract for the work may be executed after approval by the Local Contract Review Board.

**C.** Informal Section Procedure for Architects, Engineers, Land Surveyors, Photogrammetrists, Transportation Planners, and Related Services.

**1.** This procedure may be used when the estimated value of the required personal services contract exceeds $100,000 but does not exceed $250,000.

**2.** Informal Request for Proposal

The City shall prepare a formal scope of services for the project. Using this scope of services the City shall craft and information request for proposals. In addition to the scope of services, this request for proposal shall include a description of the proposed project, project completion dates, a description of any special requirements, if present, and the criteria, in sufficient detail and with points assigned, which will be used to rank the submitted proposals. No form of compensation (proposed cost, hourly rates, number of staff hours, or others) may be used as criteria nor may the City ask proposers to submit any pricing information.

The City shall send this information request for proposal to at least five (5) firms that have qualified for the service through the City's Professional Services qualified roster. If fewer than five (5) firms have qualified, the City shall send to all that have qualified and put a

note in the project file.

**3.** Screening and Final Ranking

The City's selection team (or project team) shall evaluate the qualifications of all applicants responding to the announcement by the closing date. The selection team shall rank the firms on their final score based on the listed criteria. The City shall use this ranking to begin the negotiation process. All firms that submitted a proposal shall receive notice from the City of the rankings.

**4.** Negotiation

The City shall enter into negotiations with the top ranked consultant regarding pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead. The City and the selected consultant shall discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to, compensation level and performance schedule, based on the scope of services. The compensation level paid must be reasonable and fair to the contracting agency as determined solely by the City. Authority to negotiate a contract under this section does not supersede any provision of ORS 279A.140 or 279C.520.

If the City and the top ranked firm are unable to come to a negotiated price for the project, the City shall move to the second ranked firm and begin negotiation. This process shall continue until the City and a ranked consultant come to an agreed upon price for the work. This negotiated price shall be presented to the Local Contract Review Board for approval. The contract for the work may be executed after approval by the Local Contract Review Board.

**D.** Direct Appointment Procedure

A qualified architects, engineers, land surveyors, photogrammetrists, transportation planners, or related services may be appointed directly from the City's Professional Services qualified roster if the value of the personal services contract does not exceed $100,000.

**E.** Responsible Parties' Actions

**1.** Architect, Engineer, Land Surveyor, Photogrammetrist, Transportation Planner, or Related Service

Submit qualifications, credentials, and performance data relating to their capabilities to the appropriate division in response to project announcement. May not include any form of pricing information.

**2.** Division/Department

a. Determine that the work on a project requires the services of a consultant.

b. Announce project as required by this section.

c. Determine appropriate selection/appointment procedure.

d. Select consultant/candidates as specified under this rule.

e. Interview the top candidates (if process selected) and make the final selection.

f. Execute contracts and awards to consultants, with the Local Contract Review Board and City Manager's prior approval.

g. Maintain a file on the selection process, including:

1) The method and copy of the announcement.

2) The names of firms/individuals and cost estimates considered.

3) A justification of need for the contract.

4) The basis for selection.

5) The means by which rates were established.

6) How reasonableness of price was determined.

7) A copy of the resulting contract.

**3.** City Manager

a. Approves each project's scope and budget as necessary.

b. Makes direct and emergency appointments as required.

c. Approves/disapproves Personal Services Contract and all subsequent amendments unless the amount of the contract requires the Board's approval.

**70.020 AMENDMENTS**

Amendments for additional work on personal service contracts shall be permitted only if the City requests additional work of the same type. Any such amendment may not ~~exceed 25% of the original contract value~~push the contract past the current year's project budget. ~~/~~If an additional personal services contract is to be awarded for work related to an existing personal service contract, the total value of the new and old contracts is to be considered in determining the type of selection procedure required. ~~/~~If a contract was originally awarded by the informal selection procedure, amendments that would result in a total contract price of more than $50,000 are not permitted. ~~/~~If a contract was originally awarded by the direct appointment procedure under Section 70.015C.1.a, amendments that would result in a total contract price of more than $10,000 are not permitted.

**PCR 80.000 - EMERGENCY CONTRACTS; SPECIFIC EXEMPTION**

## REQUIREMENTS; BOARD EXCEPTION; PROCEDURES; TEMPORARY EXEMPTIONS

### 80.010 EMERGENCY CONTRACTS

**A.** The City Manager or designee may, at the City Manager's or designee's discretion, authorize or let public contracts without a formal competitive process if an emergency exists and the emergency consists of circumstances creating a substantial risk of loss, damage, interruption of service, or threat to public health or safety that could not have been reasonably foreseen and requires prompt execution of a contract to remedy the condition.

**B.** The City Manager or designee must declare the existence of an emergency, which shall authorize the City to enter into an emergency contract with a price under $50,000 and make detailed written findings describing the emergency conditions necessitating prompt execution of the contract. A copy of the findings together with the amount of the contract and the name of the contractor shall be immediately forwarded by the City Manager to the Board.

**C.** Any contract awarded under this exemption shall be awarded within sixty (60) days following declaration of the emergency unless an extension is granted.

**D.** The City may enter into a public contract without a formal competitive process when circumstances that could not reasonably be anticipated, require prompt establishment and performance of the contract in order to preserve public funds, property, or the uninterrupted provision of government services. In exercising its authority under this exemption, the City shall:

**1.** 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;

**2.** Make written findings describing the circumstances that require the prompt performance of the contract and of the harm anticipated to result from failing to establish the contract on an expedited basis; and

**3.** Record the measures taken under subsection (a) of this section to encourage competition, the amounts of the quotes or proposals obtained, if any, and the reason for selecting the contractor.

**E.** The City shall not contract pursuant to the exemption in the absence of a substantial risk of loss, damage, or interruption of services that would occur if contract performance awaited the time necessary, given the complexity of the project, to solicit, receive and analyze bids or proposals.

## PCR 90.000 – RECYCLABLE,/ RECYCLED, AND SUSTAINABLE PURCHASING GUIDELINES

### 90.010 RECYCLED MATERIALS AND PRODUCTS GUIDELINES

The City shall make a good faith effort to prefer, specify, and purchase recyclable items and

materials with recycled content in accordance with ORS 279A.125.

Incentives for recycled materials shall be applied whenever economically feasible.

A preference of 5% shall be applied for materials and supplies manufactured from recycled materials, as provided in PCR 90.015 with the exception of recycled paper and paper products, which receive a higher preference percentage as stated in PCR 90.020.

The bidder or proposer shall indicate in its bid or proposal, the materials it considers subject to the 5% preference. The 5% preference will only apply to the value of that portion of a bid or proposal that offers products containing verifiable recycled contents. The "5% preference" shall be applied by dividing the bid amount for the recycled goods by 1.05 and using the resulting number in calculating the total bid amount.

## 90.015 RECYCLED MATERIALS PREFERENCE

**A.** In order to qualify for a recycled materials preference, bidders and proposers, in their bids and proposals, shall certify the minimum or the exact percentage of recycled product in all materials and supplies offered and both the post-consumer and secondary waste content thereof.

**B.** Bids that contain false information about the percentage of recycled product, post-consumer and secondary waste content, and verifiable recycled content shall be rejected as non-responsive.

~~A.~~**C.** Contracts awarded as a result of a preference under this rule are subject to investigation, including but not limited to, audits, plant visitations, examination of invoices and other documents, etc., as the City deems necessary to confirm that the products supplied contain the percentages of recycled product, post-consumer and secondary waste stated in the bid or proposal.

~~B.~~**D.** Failure to provide products containing the percentages of recycled product, post-consumer and secondary waste stated in the bid may result in:

**1.** The contractor being required to reimburse the City for the portion of the contract price that is attributable to the preference; and

**2.** Contract termination; or

**3.** Both 1 and 2, or such other remedies the City deems appropriate.

## 90.020 RECYCLED MATERIALS AND PRODUCTS PURCHASING GUIDELINES

**A.** Purchase of Paper Products

The City promotes the use of recycled paper and paper products. Purchase of recycled paper and paper products is preferred even when the cost of the such recycled paper or paper products is up to seven percent (7%) higher than the cost of the same quality paper or paper products containing little or no recycled paper. "Recycled paper" shall be defined as a paper product with not less than fifty percent (50%) of its total weight consisting of secondary waste materials or twenty five percent

(25%) of its total weight consisting of post-consumer waste.

1. In the specification and purchase of City high speed copier and small offset press application paper and fine printing paper including book, bond, cover, gum, index, bristols, boards, ledger, and duplicator papers:

    a. The City shall use recycled paper wherever possible if available and compatible with existing printing and copying equipment;

    b. The City shall try to eliminate excessive or unnecessary paper use, including but not limited to over-purchase of paper, over-printing of materials, purchases of too high a grade of paper, purchase of paper which is not recyclable; and purchase of virgin paper when recycled paper is available in the same grade;

    c. Procurement specifications for the purchase of new printing and copying equipment shall require the acceptance and operational use of recycled paper and shall be capable of two-sided copying;

    d. The procurement of unbleached, recycled paper is encouraged and the use of bright, hard to bleach colored or otherwise non-recyclable papers shall be discouraged; and

    e. In the specification and purchase of other paper items including corrugated and fiberboard boxes, folding box board and cartons, stationery, envelopes, legal and scratch pads, manifold business forms (including computer paper), toilet tissue, paper towels, facial tissue, paper napkins and industrial wipes, and brown and coarse papers, the City shall actively solicit information from vendors with regard to the availability of other paper products (as listed above) with recycled paper content and promote its use.

**B.** Purchase of Composted Waste Materials

In the specification and purchase of landscape cover, soil amendment, and fill materials:

1. The City shall eliminate from procurement specifications any exclusions or barriers to the purchase of recycled compost materials except for exclusions based upon plant or human health or safety; and

2. The City shall make every effort to utilize and specify functionally equivalent composted waste products in the place of products manufactured from virgin materials.

**C.** Purchase of Re-refined Petroleum Products

In the purchase of lubricating oils for vehicles and equipment in the City fleet:

1. The City shall make every reasonable effort to utilize lubricating oils with re-refined oil content unless:

    a. The product does not meet performance specifications recommended by the original equipment manufacturer and related warranties would be voided; and

b. The product is found to not be economically or technically feasible.

**2.** The City shall review current procurement specifications in order to eliminate (wherever economically and technically feasible) an exclusion of lubricants refined from recycled waste materials.

**D.** Purchase of Building Insulation Products

In the specification and purchase of building insulation products:

**1.** The City shall make every effort to prefer, specify and purchase insulation products manufactured from recovered or recycled materials for maintenance and repair operations, building construction projects and work or projects which are let to private contractors; and

**2.** A decision not to purchase insulation products with the highest percentage of recovered material content shall be based upon a determination that such products:

a. Are not available within a reasonable period of time;

b. Are not available at a reasonable price; and/or

c. Fail to meet reasonable performance standards set forth in applicable specifications.

**E.** Purchase of Recyclable Plastic Products

In the specifications and purchase of disposable food service products and bags:

**1.** The City shall specify and utilize products, which are exclusively recyclable where available and locally marketed. Preference shall be given to products manufactured from materials which are readily recyclable with developed recycling markets and processes; and

**F.** Recycling/Reuse

The City shall also recycle or reuse materials and supplies of purchases as much as possible. Following is a listing of some basic items which shall be recycled or reused: paper, cardboard, scrap metal, tires, lubricants, and solvents, lead acid batteries, roadside brush and chipped wood waste, plastic materials, and surplus property.

## 90.025 SUSTAINABLE OR "GREEN" PURCHASES

It is the policy of the City to procure sustainable, or "green", products and services whenever it is deemed financially or operationally feasible.

~~PCR 100.00 — INTERGOVERNMENTAL AGREEMENTS~~

~~100.010 RIGHT TO ENTER INTERGOVERNMENTAL AGREEMENTS~~

~~The City may as set forth in ORS 190.010, enter into a written agreement with any other unit or units of local government for the performance of any or all functions and activities that a party to the agreement, its department, offices, officers, agents, or employees, have authority to perform. The Intergovernmental Agreement shall serve to define roles and responsibilities for each party.~~

~~Any agreement let by the City under this Section of the PCRs shall specify the functions or activities to be performed and by what means they shall be performed. Information provided in the let Intergovernmental Agreements shall include:~~

~~A. The agencies involved along with contact departments or divisions;~~

~~B. The functions or activities to be carried out, and by which party, during the terms of the agreement;~~

~~C. The payment and funding terms, if applicable;~~

~~D. The apportionment of fees or other revenue derived from the functions or activities under the agreement, if applicable;~~

~~E. The duration terms of the agreement;~~

~~F. The rights of the parties to terminate the agreement;~~

~~All other provisions carried out in ORS 190.010 relating to Intergovernmental Agreements shall be followed by the City.~~

~~100.020APPLICABILITY OF INTERGOVERNMENTAL AGREEMENTS~~

~~The City shall require an Intergovernmental Agreement be let any time obligations between the City and a unit or units of another local governmental agency exist. Exchange of funds does not need to occur for an Intergovernmental Agreement to be required.~~

~~100.030INTERGOVERNMENTAL AGREEMENT APPROVAL AUTHORITY~~

~~The Tigard City Council shall have the sole right to award the City's Intergovernmental Agreements unless the Council delegates such authority to the City Manager. Such delegation to the City Manager shall not exceed the dollar threshold granted to the City Manager under Tigard Municipal Code. Upon award of an Intergovernmental Agreement by the City Council, either the Mayor or City Manager shall be authorized to execute and sign the Agreement.~~

**AIS-1088** **6.**

**Special Meeting**

| | | | |
|---|---|---|---|
| **Meeting Date:** | 04/02/2013 | | |
| **Length (in minutes):** | 10 Minutes | | |
| **Agenda Title:** | Briefing on a Local Agency Agreement Amendment with ODOT to Partially Fund Main Street Phase I Improvements from Pacific Hwy. to the Railroad Corridor | | |
| **Prepared For:** | Kim McMillan | **Submitted By:** | Greer Gaston, Public Works |
| **Item Type:** | | **Meeting Type:** | Council Workshop Mtg. |

**Public Hearing**
**Newspaper Legal Ad Required?:**

**Public Hearing Publication**
**Date in Newspaper:**

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**Information**

**ISSUE**

Briefing on an amendment to a local agency agreement with the Oregon Department of Transportation (ODOT) to increase funding for the Main Street Phase I improvements from Pacific Highway (99W) to the railroad corridor.

**STAFF RECOMMENDATION / ACTION REQUEST**

No action is required; the council will consider the amendment to the local agency agreement on its April 9, 2013, consent agenda.

**KEY FACTS AND INFORMATION SUMMARY**

**The Project and Costs**

Phase I of the Main Street Green Street project received a Federal-Aid Surface Transportation Program (STP) grant from Metro to construct green street elements such as pedestrian improvements, stormwater planters, LED street lights and landscaping. Due to design changes, the total estimated project costs have increased by about $425,000 from $3.04 million to be $3.47 million.

The increase in project costs can be attributed to:

- 2012 council-directed design changes related to the turn-around, and the apartment complex and adjacent property owners.
- An extensive public involvement effort for parking.
- Re-design of the Burnham Street/Main Street intersection, Tri-Met bus stops and curb lines (to increase pedestrian space).
- Refinement of project costs.

**The Amendment**

The attached amendment, in conjunction with a local agency agreement with ODOT*, documents the increase in project costs and re-allocates $425,000 of a $1.66 million Metro grant from Main Street Green Street Phase II to Phase I. This will ensure Phase I is fully funded by increasing the STP award from $2.7 million to just over $3.1 million. The city must provide the remaining funding—approximately $365,000—which includes the city's local match.

* See the *Briefing on a Local Agency Agreement with ODOT to Partially Fund Main Street Phase II Improvements from the Railroad*

*Corridor to Scoffins Street* (AIS-1086). The briefing on this agreement is scheduled for this meeting.

## OTHER ALTERNATIVES

The council could propose changes to the amendment or could decide not to approve the amendment. The amendment is currently scheduled for consideration on the council's April 9, 2013, consent agenda.

If the city and ODOT fail to execute an amendment, project funding for Main Street Green Street Phase I would be compromised.

## COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS

Tigard Downtown Streetscape Design, (2006)
City Center Urban Renewal Plan, (2005)

## DATES OF PREVIOUS CONSIDERATION

On August 11, 2009, the council approved the original local agency agreement (Surface Transportation Program) between ODOT and the city.

On October 25, 2011, the council re-allocated $1.66 million in grant funding from the Walnut Street improvement project to Phase II of the Main Street Green Street project.

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## Fiscal Impact

| | |
|---|---|
| **Cost:** | $3.5 million |
| **Budgeted (yes or no):** | Yes |
| **Where Budgeted (department/program):** | Multiple funds - see below * |

**Additional Fiscal Notes:**

Due to design changes and a more refined estimate, project costs have increased by about $425,000 from $3.04 million to be $3.47 million. If this amendment is approved, $425,000 of a $1.66 million Metro grant will be re-allocated from Main Street Green Street Phase II to Phase I. This will ensure Phase I is fully funded by increasing the STP award from $2.7 million to just over $3.1 million. The city must provide the remaining funding—approximately $365,000—which includes the city's local match.

* City funding will come from the following sources:

- $1.1 million Gas Tax Fund for the city's local match, professional services contracts outside the ODOT agreement and staff time.
- $240,000 Water Fund

Since the increase in grant funding will offset the increase in estimated project costs, approval of this amendment does not impact internal expenses for this project. However, approval of the amendment, and the corresponding local agency agreement for Phase II **, will reduce grant funding for Phase II by $425,000. Staff anticipated this reduction and increased the city's match accordingly. The city's estimated cost to construct Phase II is $1 million. The current CIP contains a total of $1.1 million in city funds in fiscal years 2014-2015 ($550,000) and 2016-2017 ($550,000) for Phase II.

** See the *Briefing on a Local Agency Agreement with ODOT to Partially Fund Main Street Phase II Improvements from the Railroad Corridor to Scoffins Street* (AIS-1086). The briefing on this agreement is scheduled for this meeting.

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## Attachments

Amendment to the Local Agency Agreement

**AMENDMENT NUMBER 01**
**LOCAL AGENCY AGREEMENT**
**SURFACE TRANSPORTATION PROGRAM – URBAN**
**SW Main Street: 99W to Rail Corridor**

The **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "State," and the **City of Tigard**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on August 28, 2009. Said Agreement covers retrofitting the southern half of Main Street which consists of widening sidewalks, the reconstruction and reconfiguration of existing streets, the re-directing of storm water, new street lighting and landscaping

It has now been determined by State and Agency that the Agreement referenced above shall be amended to increase funding, add contact information and add revised Attachment No. 1 Standard Provisions. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**ATTACHMENT NO. 1, STANDARD PROVISIONS, shall be deleted in its entirety and replaced with the attached REVISED ATTACHMENT NO. 1, STANDARD PROVISIONS. All references to "ATTACHMENT NO. 1, STANDARD PROVISIONS" shall hereinafter be referred to as "REVISED ATTACHMENT NO. 1, STANDARD PROVISIONS."**

**TERMS OF AGREEMENT, Paragraph 2, Page 1, which reads:**

2. The Project shall be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The total Project cost is estimated at $3,040,000, which is subject to change. STP urban funds for this Project shall be limited to $2,674,929. The Project will be financed with STP funds at the maximum allowable federal participating amount, with Agency providing the match and any non-participating costs, including all costs in excess of the available federal funds.

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

2. The Project shall be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The total Project cost is estimated at $3,465,576, which is subject to change. STP urban funds for this Project shall be limited to $3,100,505. The Project will be financed with STP funds at the maximum allowable federal participating amount, with Agency providing the match and any non-participating costs, including all costs in excess of the available federal funds.

**Insert new TERMS OF AGREEMENT, Paragraph 12 thru 13, to read as follows:**

12. State's Project Manager for this Project is Michele Thom, 123 NW Flanders St., Portland, OR 97209, (503) 731-8279, Michele.R.THOM@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

13. Agency's Project Manager for this Project is Kim McMillan, 13125 SW Hall Blvd., Tigard, OR 97223, (503) 718-2642, kim@tigard-or.gov, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

**TERMS OF AGREEMENT, Paragraphs 12 through 13, shall be hereinafter re-numbered as Paragraphs 14 through 15.**

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

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key #15600) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

**Signature page to follow**

Agency/State
Agreement No. 25,365-01

**CITY OF TIGARD**, by and through its elected officials

By _____
Mayor

Date _____

By _____
Recorder

Date _____

**APPROVED AS TO LEGAL SUFFICIENCY**

By _____
City Attorney

Date _____

**Agency Contact:**
Kim McMillan
13125 SW Hall Blvd.
Tigard, OR 97223
503-718-2642
kim@tigard-or.gov

**State Contact:**
Michele Thom
123 NW Flanders
Portland, Oregon 97209
503-731-8279
Michele.R.THOM@odot.state.or.us

**STATE OF OREGON**, by and through its Department of Transportation

By _____
Deputy Director, Highways

Date _____

**APPROVAL RECOMMENDED**

By _____
Technical Services Manager/
Chief Engineer

Date _____

By _____
Region 1 Manager

Date 11/26/12

**APPROVED AS TO LEGAL SUFFICIENCY**

By_____
Assistant Attorney General

Date:_____

REVISED ATTACHMENT NO. 1 to Agreement No. 25,365
SPECIAL PROVISIONS

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

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

3. State may make available Region 1's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work performed by the consultant and make funds available to the State for payment of those services. All eligible work will be a federally participating cost and included as part of the total cost of the Project.

4. Indemnification language in the Standards Provisions, Paragraphs 45 and 46; and Paragraph 4 in regards to tort claims, shall be replaced with the following language:

   a. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

   b. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any

other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

c. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

d. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

5. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand.

6. Agency shall, upon completion of the Project, maintain and supply power for Project illumination at its own expense.

7. Maintenance responsibilities will survive any termination of this Agreement.

**AIS-1086** **7.**

**Special Meeting**

| | | | |
|---|---|---|---|
| **Meeting Date:** | 04/02/2013 | | |
| **Length (in minutes):** | 10 Minutes | | |
| **Agenda Title:** | Briefing on a Local Agency Agreement with ODOT to Partially Fund Main Street Phase II Improvements from the Railroad Corridor to Scoffins Street | | |
| **Prepared For:** | Kim McMillan | **Submitted By:** | Greer Gaston, Public Works |
| **Item Type:** | | **Meeting Type:** | Council Workshop Mtg. |

**Public Hearing**
**Newspaper Legal Ad Required?:**

**Public Hearing Publication**
**Date in Newspaper:**

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**Information**

**ISSUE**

Briefing on a local agency agreement with the Oregon Department of Transportation (ODOT) to partially fund Main Street Phase II improvements from the railroad corridor to Scoffins Street.

**STAFF RECOMMENDATION / ACTION REQUEST**

No action is required; the council will consider the local agency agreement on its April 9, 2013, consent agenda.

**KEY FACTS AND INFORMATION SUMMARY**

**The Project and Costs**

Phase II of the Main Street Green Street project will rebuild portions of Main Street from the railroad tracks north to Scoffins Street, incorporating green street elements such as pedestrian improvements, stormwater planters, LED street lights and landscaping. Project costs are estimated to be $2.23 million.

The northernmost section of Main Street, from Scoffins Street to Pacific Highway (99W), was improved as part of the Greenburg Road/Pacific Highway/Main Street intersection improvement project. Similar improvements will be underway shortly on the southernmost section of Main Street, from Pacific Highway to the railroad tracks, through Phase I of the Main Street Green Street project.

Upon completion of the Phase II construction, currently scheduled to begin in fiscal year 2014-2015, the entire length of Main Street will have been rebuilt to green street standards.

**The Agreement**

The attached agreement, between the city and ODOT, formalizes responsibilities as they pertain to Phase II of the Main Street Green Street project. General terms of the agreement are as follows.

ODOT will:

- Oversee the project and the management of $1.23 million in Federal-Aid Surface Transportation (STP) dollars.
- Oversee the acquisition of right of way and easements for compliance with federal regulations. A separate agreement will be presented to council for these services after the project design is underway.
- Prepare contract and bid documents, advertise for bid proposals and award all contracts.

Tigard will:

- Provide all funding in excess of the available federal funds—estimated to be about $1 million. (This includes the city's local match.)
- Hire consultants to provide all construction engineering, field testing of materials, technical inspection and project management services.
- Assume responsibility, defend any lawsuits, indemnify and hold the state (ODOT) harmless for claims or lawsuits.
- Obtain all permits.
- Be responsible for acquisition of right of way and easements.

This agreement, in conjunction with an amendment to a local agency agreement with ODOT *, will re-allocate $425,000 of a $1.66 million Metro grant from Main Street Green Street Phase II to Phase I.

* See the *Briefing on a Local Agency Agreement Amendment with ODOT to Partially Fund Main Street Phase I Improvements from Pacific Hwy. to the Railroad* (AIS-1088). The briefing on this amendment is scheduled for this meeting.

**The Relationship**

The Federal Highway Administration (FHWA) is the ultimate outside funding source for both phases of the Main Street Green Street project. The federal funding reaches the local agencies through Metro grants. Metro is a designated Transportation Management Area Metropolitan Planning Organization, receiving a sub-allocation of funds from the Federal Highway Administration (FHWA). Through the grant process, these funds are distributed to select projects meeting various Metro criteria, such as green streets. City staff applied for and received the initial grants for Main Street Green Street, Phase I and Phase II.

The FHWA has designated ODOT, through an agreement between agencies, to oversee the management of these funds and projects. ODOT enters into a contract with the city's design consultant and reviews plans for compliance with design and construction standards. Metro continues to be involved to ensure grant criteria, like green street elements, are met throughout design.

## OTHER ALTERNATIVES

The council could propose changes to the agreement or could decide not to approve the agreement. The agreement is currently scheduled for consideration on the council's April 9, 2013, consent agenda.

If the city and ODOT fail to execute an agreement, project funding for Phase I would be compromised.

## COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS

Tigard Downtown Streetscape Design, (2006)
City Center Urban Renewal Plan, (2005)

## DATES OF PREVIOUS CONSIDERATION

This is the first time this agreement has come before the council.

On October 25, 2011, the council re-allocated $1.66 million in Metro grant funding from the Walnut Street improvement project to Phase II of the Main Street Green Street project.

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**Fiscal Impact**

| | |
|---|---|
| **Cost:** | $2.23 million |
| **Budgeted (yes or no):** | Yes * |
| **Where Budgeted (department/program):** | Multiple funds - see below * |
| **Additional Fiscal Notes:** | |

This agreement, in conjunction with an amendment to another agreement with ODOT**, re-allocates $425,000 of a $1.66 million Metro grant from Main Street Green Street Phase II to Phase I. This ensures Phase I is fully funded. However, approval of this agreement and the amendment will reduce grant funding for Phase II by $425,000. Staff anticipated this reduction and increased the city's match accordingly.

Phase II project costs are estimated to be $2.23 million. Assuming the city enters into the agreement and accepts $1.23 million in grant funding, the city will be responsible for the balance of the project costs—approximately $1 million.

* The current CIP contains a total of $1.1 million in city funds in fiscal years 2014-2015 ($550,000) and 2016-2017 ($550,000)—sufficient funds to construct Phase II. Funding is as follows:

- $200,000 Urban Renewal Capital Improvements
- $150,000 Water Fund
- $150,000 Sanitary Sewer Fund
- $450,000 Gas Tax Fund
- $150,000 Stormwater Fund

** See the *Briefing on a Local Agency Agreement Amendment with ODOT to Partially Fund Main Street Phase I Improvements from Pacific Hwy. to the Railroad* (AIS-1088). The briefing on this amendment is scheduled for this meeting.

**Attachments**

Local Agency Agreement

# LOCAL AGENCY AGREEMENT
# SURFACE TRANSPORTATION PROGRAM – URBAN
# SW Main Street: Rail Corridor – Scoffins Street

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the CITY OF TIGARD, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

## RECITALS

1. SW Main Street is a part of the city street system under the jurisdiction and control of Agency.

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

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

## TERMS OF AGREEMENT

1. Under such authority, State and Agency agree to Agency retrofitting the northern half of Main Street, hereinafter referred to as "Project." The Project consists of widening sidewalks, the reconstruction and reconfiguration of existing streets; re-direct storm water, and new street lighting and landscaping. The location of the Project is approximately as shown on the detailed map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

2. The Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The total Project cost is estimated at $2,225,000, which is subject to change. STP urban funds for this Project will be limited to $1,234,424. The Project will be financed with STP funds at the maximum allowable federal participating amount, with Agency providing the match and any non-participating costs, including all costs in excess of the available federal funds.

3. The federal funding for this Project is contingent upon approval by the Federal Highway Administration (FHWA). Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency expense.

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

5. The term of this Agreement will begin upon execution and will terminate upon completion of the Project and final payment or ten (10) calendar years following the date of final execution, whichever is sooner.

6. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless that State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts of omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of State, be indemnified by the contractor and subcontractor from and against any and all Claims.

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

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

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

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

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

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

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

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

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

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

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

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

14. State's Project Manager for this Project is Michele Thom, Region 1 Local Agency Liaison, 123 NW Flanders St., Portland, OR 97209, (503) 731-8279, Michele.R.THOM@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

15. Agency's Project Manager for this Project is Kim McMillan, P.E., Construction Services Engineering Manager, City of Tigard, 13125 SW Hall Blvd., Tigard, OR 97223, (503) 718-2642, kim@tigard-or.gov, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

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

17. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement will bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement will not constitute a waiver by State of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key #17757) that was approved by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

***Signature page to follow***

Agency/State
Agreement No. 28978

**CITY OF TIGARD**, by and through its elected officials

By _____
Mayor

Date _____

By _____
Recorder

Date _____

**APPROVED AS TO LEGAL SUFFICIENCY**

By _____
City Attorney

Date _____

**Agency Contact:**
Kim McMillan, P.E.
Construction Services Engineering Manager
City of Tigard
13125 SW Hall Blvd.
Tigard, OR 97223
503-718-2642
kim@tigard-or.gov

**State Contact:**
Michele Thom, Local Agency Liaison
ODOT, Region 1
123 NW Flanders
Portland, Oregon 97209
503-731-8279
Michele.R.THOM@odot.state.or.us

**STATE OF OREGON**, by and through its Department of Transportation

By _____
Highway Division Administrator

Date _____

**APPROVAL RECOMMENDED**

By _____
Technical Services Manager/
Chief Engineer

Date _____

By _____
Region 1 Manager

Date 12/13/12

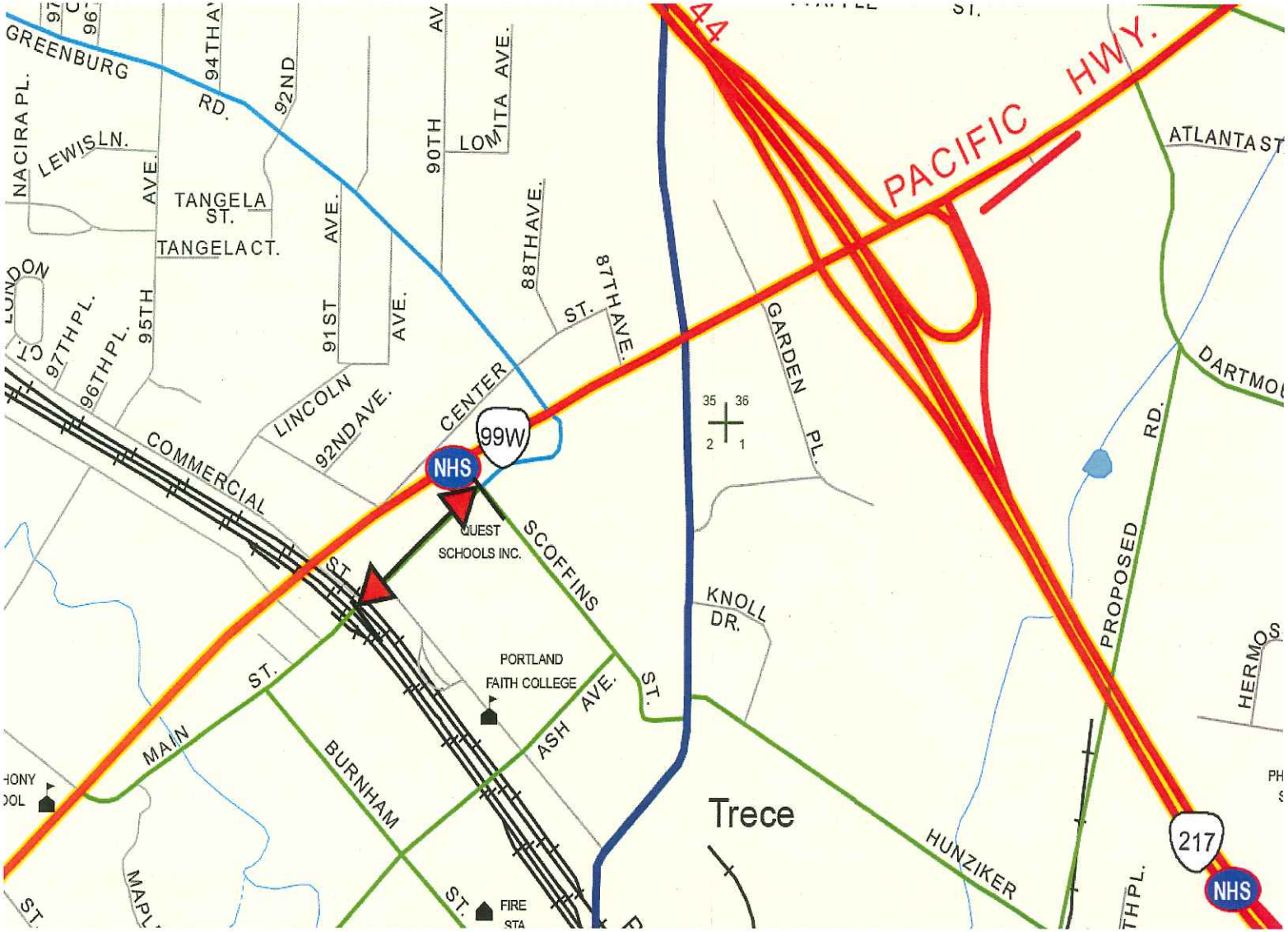
**APPROVED AS TO LEGAL SUFFICIENCY**

By _____
Assistant Attorney General

Date: _____

Agency/State
Agreement No. 28978

## EXHIBIT A – Project Location Map



**ATTACHMENT NO. 1 to Agreement No. 28978**
**SPECIAL PROVISIONS**

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

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

3. State may make available Region 1's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work performed by the consultant and make funds available to the State for payment of those services. All eligible work will be a federally participating cost and included as part of the total cost of the Project.

4. Indemnification language in the Standards Provisions, Paragraphs 46 and 47; and Paragraph 4 in regards to tort claims, shall be replaced with the following language:

   a. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

   b. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference

to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

c. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

d. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

5. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand.

6. Agency shall, upon completion of the Project, maintain and supply power for Project illumination at its own expense.

7. Maintenance responsibilities will survive any termination of this Agreement.

# ATTACHMENT NO. 2

# FEDERAL STANDARD PROVISIONS

## JOINT OBLIGATIONS
## PROJECT ADMINISTRATION

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

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

## PRELIMINARY & CONSTRUCTION ENGINEERING

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

4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims,

contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

## REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF TRANSPORTATION (USDOT) FINANCIAL ASSISTANCE AGREEMENT

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

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

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

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

9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; 2 CFR 225, and OMB CIRCULAR NO. A-133, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide (FAPG).

## STATE OBLIGATIONS

## PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The program shall include services to be provided by State, Agency, or others. State shall notify Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

## FINANCE

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

12. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. State will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.

## PROJECT ACTIVITIES

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

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

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

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

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

## RIGHT OF WAY

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

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

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

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

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

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

## AGENCY OBLIGATIONS

## FINANCE

24. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.

25. Agency's estimated share and advance deposit.

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

    b) Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## RAILROADS

35. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

## UTILITIES

36. Agency shall follow State established Statutes, Policies and Procedures when impacts occur to privately or publicly-owned utilities. Only those utility relocations, which are eligible for federal-aid participation under, the FAPG, Title 23 CFR 645A, Subpart A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.

37. The State utility relocation policy, procedures and forms are available through the appropriate State's Region Utility Specialist or State Utility Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison.

## STANDARDS

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

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

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

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

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

## GRADE CHANGE LIABILITY

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

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

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

## CONTRACTOR CLAIMS

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

47. Notwithstanding the foregoing defense obligations under Paragraph 46, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon

or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

## MAINTENANCE RESPONSIBILITIES

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

## WORKERS' COMPENSATION COVERAGE

49. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than $500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.

## LOBBYING RESTRICTIONS

50. Agency certifies by signing the Agreement that:

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

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

    c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans,

and cooperative agreements) which exceed $100,000, and that all such subrecipients shall certify and disclose accordingly.

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

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

Paragraphs 36, 37, and 48 are not applicable to any local agency on state highway projects.

**AIS-1151**

**8.**

**Special Meeting**

| | | | |
|---|---|---|---|
| **Meeting Date:** | 04/02/2013 | | |
| **Length (in minutes):** | 10 Minutes | | |
| **Agenda Title:** | Briefing on an Intergovernmental Agreement with Washington County on the Walnut Street Improvement Project | | |
| **Prepared For:** | Mike McCarthy | **Submitted By:** | Greer Gaston, Public Works |
| **Item Type:** | | **Meeting Type:** | Council Business Mtg - Study Sess. |

**Public Hearing**
**Newspaper Legal Ad Required?:**

**Public Hearing Publication**
**Date in Newspaper:**

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**Information**

**ISSUE**

Briefing on an intergovernmental agreement (IGA) with Washington County on the Walnut Street improvement project.

**STAFF RECOMMENDATION / ACTION REQUEST**

No action is required; the council will consider the agreement on its April 9, 2013, consent agenda.

**KEY FACTS AND INFORMATION SUMMARY**

**The Walnut Street Improvement Project**

County roadway improvements and city utility improvements are combined in the Walnut Street improvement project. When compared to constructing the improvements separately, this combination will save money and reduce disruptions to motorists and area residents.

The county's roadway portion of the project includes the construction of sidewalks, bike lanes, portions of center turn lane, storm drainage, culvert replacement, street lighting and associated street improvements along Walnut Street (a section of which lies adjacent to Fowler Middle School) from Tiedeman Avenue to the existing widened roadway section at 116th Avenue. This project will also construct a traffic signal or roundabout and associated street widening at the northern intersection of Walnut Street with 135th Avenue.

The city's utility portion of the project includes construction of a new sanitary sewer, undergrounding of existing overhead franchised utilities and other utility-related improvements.

**The IGA**

This IGA defines the project, outlines how it will be completed, and designates the respective roles and responsibilities of the city and county. Key terms of the agreement are:

- The county will lead and take responsibility for all aspects of delivering the project, including hiring and overseeing an engineering firm to prepare the plans, acquiring right of way and easements, obtaining all necessary permits, bidding the project, hiring and overseeing the contractor, managing and inspecting construction, and paying the bills.
- The roadway work is funded primarily by Washington County's Major Streets Transportation Improvement Program (MSTIP), with the city contributing staff resources to the project team in order to represent the city's interests.

- The sanitary sewer construction and franchise utility undergrounding will be funded by the city. The city will reimburse the county for the design, property acquisition, construction costs, and project management and inspection of the utility work portion of the project.
- The city agrees to follow the federally-designated right of way acquisition process and to adopt a resolution of necessity giving the county legal authority to obtain any easements required to construct the project.

Design work will begin in the current fiscal year and construction is planned in fiscal years 2013-2014 and 2014-2015.

This agreement has been reviewed and approved as to form by the city attorney.

## OTHER ALTERNATIVES

The council could propose changes to the agreement or could decide not to approve the agreement. Some changes to the agreement may be feasible, although the county would likely object to any changes that would add to its costs, responsibility or liability.

If the county and city fail to execute an agreement, the county will not construct the project. MSTIP dollars would be re-directed to other county projects.

## COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS

This project is included in Tigard's *2035 Transportation System Plan*. It is also listed in Metro's *2035 Regional Transportation Plan*.

City officials have successfully worked with county officials to get this project funded through Washington County's Major Streets Transportation Improvement Program (MSTIP).

## DATES OF PREVIOUS CONSIDERATION

This is the first time this IGA has come before the council.

---

**Fiscal Impact**

| | |
|---|---|
| **Cost:** | $680,000 |
| **Budgeted (yes or no):** | Yes * |
| **Where Budgeted (department/program):** | Multiple Funds - see below |

**Additional Fiscal Notes:**

The IGA puts the cost estimate for the city's portion of the project at $595,000. The city estimates it will spend an additional $85,000 in staff time as part of the project team to represent the city's interests. The city's total cost is approximately $680,000.

* The current 2013-2017 CIP contains $1.5 million in city funds in fiscal years 2015-2016 and 2016-2017 to construct the roadway improvements. The CIP assumed the city would receive additional funding from outside revenue sources to complete the project.

If the council approves the IGA:

- The roadway improvements will be funded by the county through its Major Streets Transportation Improvement Program (MSTIP).
- The project will be constructed in fiscal years 2013-2014 and 2014-2015; two years earlier than scheduled in the city's CIP.
- City funding for this project will decrease from an estimated $1.5 million to $680,000. Funding in the proposed 2014-2018 Capital Improvement Plan (CIP) would be as follows:
    - $300,000 Utility Undergrounding Fund
    - $250,000 Sanitary Sewer Extension Program (and future reimbursement district)
    - $65,000 Gas Tax Fund

- $65,000 Stormwater Fund

**Attachments**

IGA

# INTERGOVERNMENTAL AGREEMENT
# BETWEEN
# WASHINGTON COUNTY AND THE CITY OF TIGARD

## FOR TRANSPORTATION AND UTILITY IMPROVEMENTS ON SW WALNUT STREET (SW 116TH AVENUE TO SW TIEDEMAN AVENUE AND AT THE INTERSECTION OF SW 135TH AVENUE)

THIS INTERGOVERNMENTAL AGREEMENT is entered into between Washington County, a political subdivision of the State of Oregon, acting by and through its elected officials, hereinafter referred to as "COUNTY"; and the City of Tigard, a municipal corporation, acting by and through its City Council, hereinafter referred to as "CITY."

## RECITALS

1. WHEREAS, ORS 190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has the authority to perform; and

2. WHEREAS, Washington County has an approved and funded Major Streets Transportation Improvement Program project to construct road improvements to SW Walnut Street, a City of Tigard Arterial Street, from SW 116th Avenue to SW Tiedeman Avenue and at the north intersection of Walnut Street with 135th Avenue; and

3. WHEREAS, CITY desires to have utility improvement work (sanitary sewer and franchise utility improvement) completed within and in conjunction with the road improvement project limits along SW Walnut Street; and,

4. WHEREAS, CITY has requested that the design, construction, and inspection of the utility improvement work be added to the road improvements of Walnut Street, and CITY agrees to pay for such requested utility improvement work; and,

5. WHEREAS, under such authority, it is the mutual desire of the COUNTY and CITY to enter into such an Agreement to cooperate in the design and construction of the improvements to the sanitary sewer and franchise utilities as part of the road improvements to Walnut Street, with the allocation of responsibilities as detailed below;

## AGREEMENT

NOW, THEREFORE, the premise being in general as stated in the foregoing recitals, and in consideration of the terms, conditions and covenants as set forth below, the parties hereto agree as follows:

## 1. PROJECT DESCRIPTION

1.1 The COUNTY road project improvements will include: road widening, curbs, sidewalks, bike lanes, street lighting, drainage, landscaping, traffic control, water quality improvements and all necessary permitting on Walnut Street between SW 116th Avenue to SW Tiedeman Avenue and at the north intersection of Walnut Street with 135th Avenue, hereinafter referred to as "ROAD PROJECT" as shown generally on the attached Exhibit A.

1.2 The CITY utility work includes installation of sanitary sewer line with respective sewer lateral installations, connections and installation of franchise underground utility improvements and utility related easement expenses, hereinafter collectively referred to as "UTILITY IMPROVEMENT WORK" as shown generally on the attached Exhibit B. This UTILITY IMPROVEMENT WORK relates to the 116th Avenue to SW Tiedeman Avenue road segment.

1.3 The ROAD PROJECT and the UTILITY IMPROVEMENT WORK are referred to herein as the "PROJECT".

## 2. COUNTY OBLIGATIONS

2.1 COUNTY shall, upon execution of this Agreement, assign a Project Manager to be responsible for coordination of PROJECT with CITY.

2.2 COUNTY shall perform, or cause to be performed, all actions necessary for the design and construction of the PROJECT including project management, design and construction engineering, property acquisition, including right-of-way as necessary, regulatory and land use permits and approvals, public information, contract administration, inspection and construction management. COUNTY shall coordinate the design of, advertise for, award, and administer the construction contract for the PROJECT.

2.3 COUNTY shall provide CITY with the opportunity for design review of final plans prior to bidding. COUNTY agrees to incorporate CITY comments that do not significantly impact project costs and/or schedule.

2.4 COUNTY shall, following the bid opening, notify the CITY of the amount of the construction cost of the UTILITY IMPROVEMENT WORK as contained in the bid and provide CITY the opportunity for review of the contract bid proposal prior to contract award.

2.5 COUNTY shall provide a final cost accounting for the PROJECT, including all internal and external costs, to the CITY within 45 days of final acceptance and payment to the contractor.

2.6 COUNTY shall provide legal descriptions for the PROJECT in a form acceptable to City so that City can adopt a Resolution of Necessity that will enable county to obtain necessary easements for construction of the PROJECT.

2.7 COUNTY shall perform actions regarding compensation as set forth in Article 4 – Compensation.

## 3. CITY OBLIGATIONS

3.1 CITY shall, upon execution of this Agreement, assign a city project manager to be responsible for coordination of PROJECT with COUNTY.

3.2 Within sixty (60) days of providing the legal descriptions for the PROJECT to the CITY as described in 2.6 above, CITY shall provide COUNTY with a Resolution of Necessity (RON) that provides an adequate description of the PROJECT and which provides adequate legal authority to COUNTY to obtain necessary easements for the construction of the PROJECT before COUNTY acquires any such easements.

3.3 CITY delegates authority to COUNTY to act on its behalf to obtain the necessary easements through negotiation or condemnation in order to construct the PROJECT as described in the RON.

3.4 Any easements obtained on behalf of the CITY by the COUNTY shall name the CITY as the owner of those easements.

3.5 CITY shall provide to the COUNTY an Approved As To Form deed document template to be used for the necessary real property acquisitions.

3.6 COUNTY shall provide inspection and testing of project work in coordination with the CITY. CITY will review project work, may perform additional testing at its own expense, and may require additional and/or corrective work to complete the project if, in the CITY's judgment, it is in the public interest to do so.

3.7 CITY shall perform actions regarding compensation as set forth in Article 4 - Compensation.

## ARTICLE 4 - COMPENSATION

4.1 DESIGN: As design work upon the PROJECT is performed, County shall, on a quarterly basis, prepare and submit design invoices to CITY for the cost of the work for UTILITY IMPROVEMENT WORK. Estimated design costs are:

| | |
|---|---|
| a. Sanitary Sewer Improvements Design | $ 7,000 |
| b. Franchise Utility Improvements Design | $ 15,000 |
| c. Estimated Total Design Cost | $ 22,000 |

Notwithstanding, the estimate of the costs shown above, the CITY shall reimburse the COUNTY for the actual amount of its cost incurred for the design of the UTILITY IMPROVEMENT WORK.

4.2 CONSTRUCTION: As construction work upon the PROJECT is performed,

COUNTY shall, on a quarterly basis, prepare and submit construction invoices to the CITY for the construction of the UTILITY IMPROVEMENT WORK. In addition to UTILITY IMPROVEMENT WORK bid items, non-construction costs of County services at a flat rate of 15% of the UTILITY IMPROVEMENT WORK construction costs shall be charged and include the following: proportional cost of applicable lump sum contracts items (i.e. mobilization and erosion control), extra work required for the UTILITY IMPROVEMENT WORK and the cost of COUNTY services including project construction management, surveying, inspection and construction contract administration.

Estimated construction costs are:

| | |
|---|---|
| a. Sanitary Sewer Improvements | $ 187,000 |
| b. Franchise Underground Conduits | $ 311,000 |
| c. Non-construction Costs of County Services (15%) | $ 75,000 |
| d. Estimated Total Construction Cost | $ 573,000 |

4.3 Any easement acquisition costs spent by the COUNTY associated with the UTILITY IMPROVEMENT WORK shall be accounted for by COUNTY and invoiced to the CITY accordingly. Utility easement costs are in addition to the above listed estimated construction and non-construction costs. Before accounting for such costs, County will inform City of the anticipated cost and allow City to approve, disprove, or challenge the anticipated cost. County will make a good-faith effort to accommodate the City's position on a proper sum.

4.4 CITY and COUNTY understand that the design and construction costs outlined above are estimates and are used to determine project budgets and estimated payment amounts used within this agreement. Final costs will be based on the actual contract amount of the schedule of prices and quantities used and installed. Final payments made by the CITY to the COUNTY related to this PROJECT shall be based on actual design invoices, actual bid prices, construction quantities and non-construction costs.

4.5 COUNTY shall provide the CITY with a final statement of UTILITY IMPROVEMENT WORK expenses within forty five (45) days of the completion of the final design phase. Costs for sanitary sewer work shall be listed separately from franchise utility improvements. Within forty five (45) days after the completion of the construction contract, the COUNTY shall provide the CITY with a final statement of UTILITY IMPROVEMENT WORK and bill the CITY for any remaining costs in excess of the payments already made, or refund any excess to the CITY. Upon the completion of the construction and completion of Record Drawings, the COUNTY shall deliver one set of reproducible Record Drawings and one electronic copy related to the UTILITY IMPROVEMENT WORK, to the CITY, for their files.

## 5. GENERAL PROVISIONS

### 5.1 LAWS OF OREGON

The parties shall comply with all applicable laws and regulations regarding the handling and expenditure of public funds. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon. All relevant provisions required by ORS Chapter 279A and 279C to be included in public contracts are incorporated and made a part of this Agreement as if fully set forth herein.

### 5.2 DEFAULT

Time is of essence in the performance of the Agreement. Either party shall be deemed to be in default if it fails to comply with any provisions of this Agreement. The non-defaulting party shall provide the other party with written notice of default and allow thirty (30) days within which to cure the defect.

### 5.3 INDEMNIFICATION

This Agreement is for the benefit of the parties only. Each party agrees to indemnify and hold harmless the other party, and its officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or arising out of services performed, the omissions of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees and agents. To the extent applicable, the above indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300). In addition, each party shall be solely responsible for any contract claims, delay damages or similar items arising from or caused by the action or inaction of the party under this agreement.

### 5.4 MODIFICATION OF AGREEMENT

No waiver, consent, modification or change of terms of this Agreement shall be binding unless in writing and signed by both parties.

### 5.5 DISPUTE RESOLUTION

The parties shall attempt to informally resolve any dispute concerning any party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A neutral third party may be used if the parties agree to facilitate these negotiations. In the event of an impasse in the resolution of any dispute, the issue shall be submitted to the governing bodies of both parties for a recommendation or resolution.

### 5.6 REMEDIES

Subject to the provisions in paragraph 5.5, any party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal

actions shall be initiated in Washington County Circuit Court. The parties, by signature of their authorized representatives below, consent to the personal jurisdiction of that court.

5.7 EXCUSED PERFORMANCE

In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control to the party to be excused.

5.8 SEVERABILITY

If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement will not be affected or impaired in any way.

5.9 INTEGRATION

This Agreement is the entire agreement of the parties on its subject and supersedes any prior discussions or agreements regarding the same subject.

## 6. TERMS OF AGREEMENT

6.1 The term of the Agreement shall be from the date of execution until the completion of the PROJECT, but not to exceed five (5) years.

6.2 This Agreement may be amended or extended for periods of up to one (1) year by mutual consent of the parties. It may be canceled or terminated for any reason by either party. Termination or cancellation shall be effective thirty (30) days after written notice to the other party, or at such time as the parties may otherwise agree. The parties shall, in good faith, agree to such reasonable provisions for winding up the PROJECT and paying for any additional costs as necessary.

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

***CITY OF TIGARD, OREGON***

_____
MAYOR

DATE: _____

ATTEST:

_____
CITY RECORDER

APPROVED AS TO FORM:

_____
CITY ATTORNEY

**WASHINGTON COUNTY, OREGON**

_____
CHAIR, BOARD OF COUNTY COMMISSIONERS

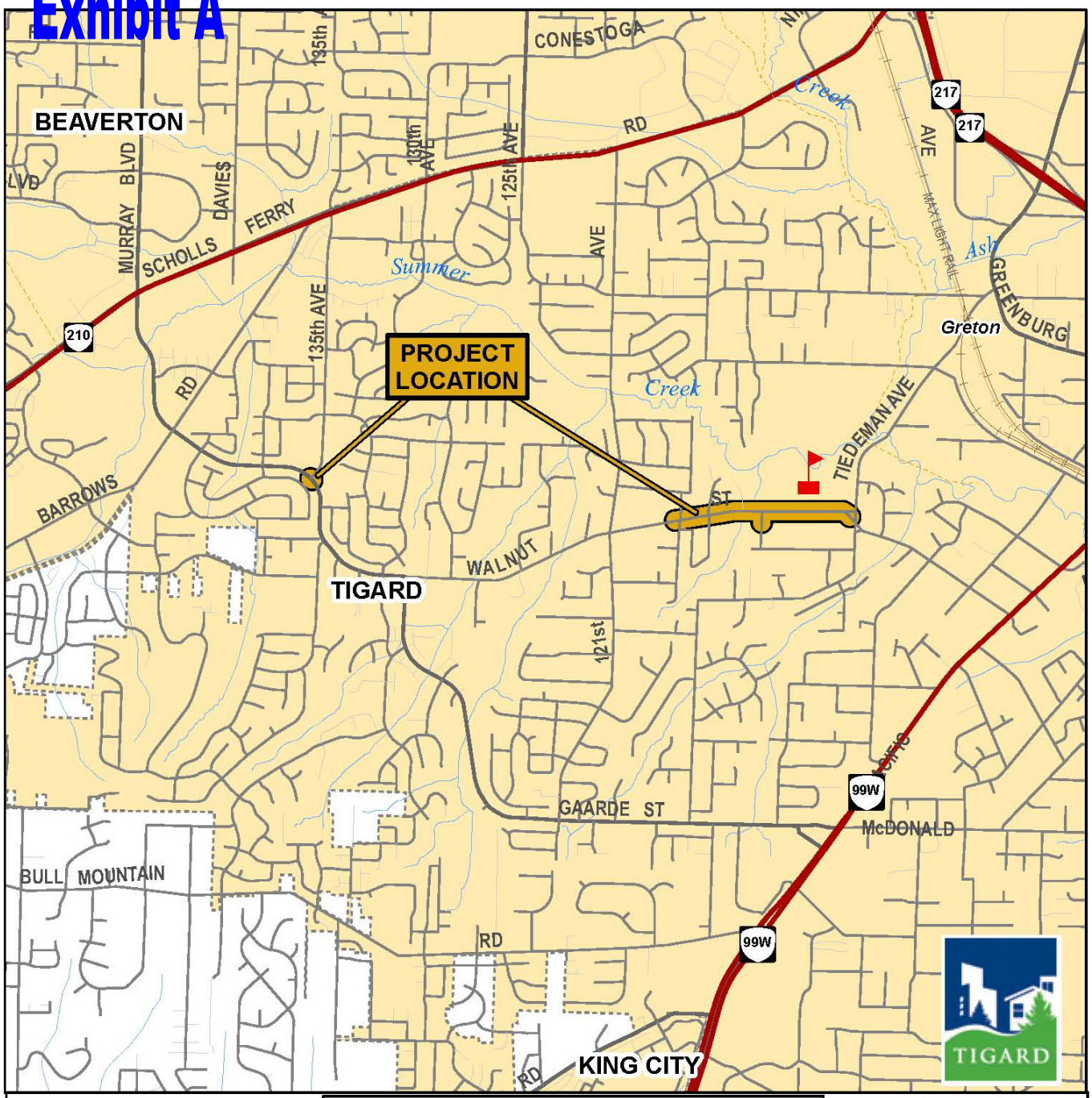
DATE: _____

_____
RECORDING SECRETARY

APPROVED AS TO FORM:

_____
COUNTY COUNSEL

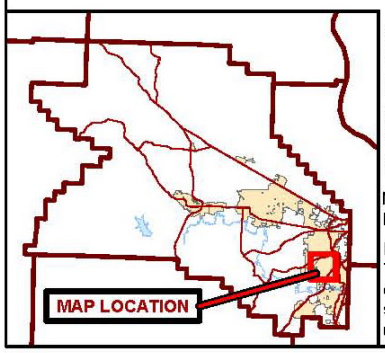
# Exhibit A




WASHINGTON COUNTY
OREGON

## S.W. WALNUT ST IMPROVEMENTS

116TH TO TIEDEMAN
AND WALNUT / 135TH INTERSECTION




For more information, contact:
Pat Oakes, Project Manager
Engineering and Construction Services
Phone: 503-846-7826
Fax: 503-846-7810
Email: patrick_oakes@co.washington.or.us

Map Date: August 2, 2012
Prepared by: EDF

N

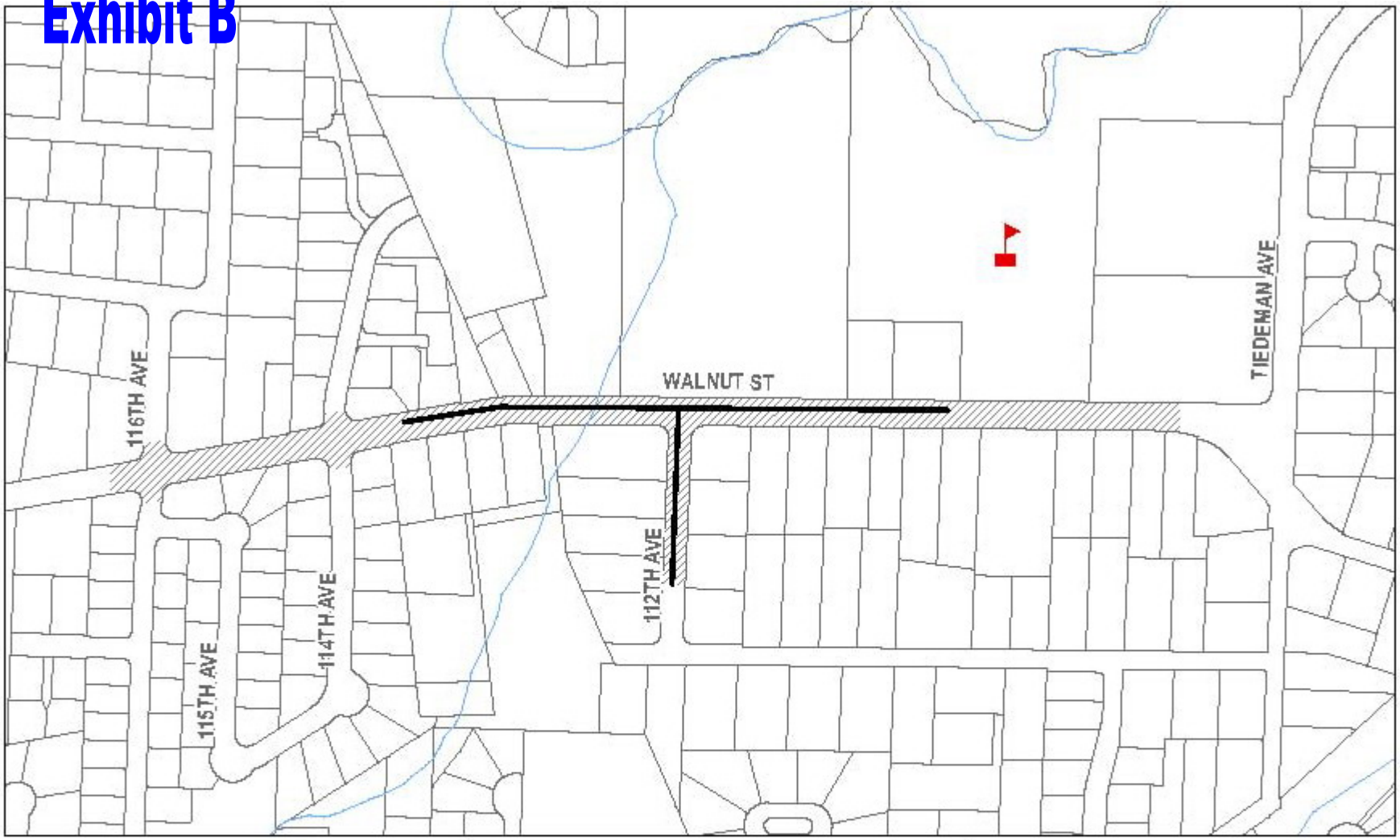
0 1,000 2,000 4,000 Feet

DISCLAIMER:
This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

**Legend**

- Light Rail
- Railroads
- Highways
- Major Roads
- Minor Roads
- Private Roads
- Project Location
- County Boundary
- Rivers / Lakes
- Streams
- Urban Growth Bdy.
- Cities

# Exhibit B




WASHINGTON COUNTY
OREGON

TIGARD

**CITY OF TIGARD UTILITY IMPROVEMENTS**
AS PART OF THE WALNUT STREET PROJECT

Map Date: December 20, 2012
Prepared by: EDF

DISCLAIMER:
This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

0 300 600 Feet

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**Legend**

Project Area*

Sanitary Line Extension

* Note: Project area includes installation of Franchise Utility Underground Conduits