

MINUTES
MILWAUKIE CITY COUNCIL WORK SESSION
NOVEMBER 15, 2011

Mayor Ferguson called the work session to order at 5:00 p.m. in the City Hall Conference Room.

Council Present: Council President Greg Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff Present: City Manager Bill Monahan, Assistant to the City Manager Teri Bankhead, City Recorder Pat DuVal, Public Affairs Coordinator Grady Wheeler, Engineering Director Gary Parkin, Operations Director Jon LeBaron, Finance Director Casey Camors, Community Development/Public Works Director Kenny Asher, Planning Director Katie Mangle, and City Attorney Tim Ramis

Media: Molly Harbarger, *The Oregonian* and Raymond Rendleman, *The Clackamas Review*

City Manager's Report

Mr. Monahan updated the City Council on the Dunn case. Mayor Ferguson, Council President Chaimov, and he met with representatives of the North Clackamas School District when they discussed the school resource officer, youth involvement, and funding issues. A future joint session with the City Council will be scheduled.

The group discussed the upcoming baseball update on January 3, 2012.

Community and Planning Activity Report

Mr. Asher provided updates on light rail, the Kellogg for Coho Project, and the two quiet zones.

Ms. Mangle said the Planning Commission continued the light rail bridge hearing and announced the next batch of assisted annexations in the NE Sewer Extension area would be after the first of the year.

Overview of City's Social Media Policy

Mr. Wheeler provided information on the City's Facebook and Twitter accounts with a focus on providing information on City events. He highlighted the major points and difference with what was being done to date. Social Media was acting as an extension of the City's website, and he discussed what was prohibited. Departments would post content to the City Facebook account and open it up so that comments and questions could enter the site. He had attended a social meeting seminar and heard that allowing comments and questions led to a more successful site

Councilor Loomis asked if social media would eventually become a full time job.

Mr. Wheeler replied the volume was not there at this time.

Councilor Miller asked if each department would have its own page.

Mr. Wheeler responded the City had one account, everyone would use the same login. He discussed branding consistency.

Mayor Ferguson liked the idea of having only one account until such time as the Library, for example, needed its own.

Update on Status of Water Utility

Mr. Parkin, Mr. LeBaron and Mike Clark were following up on the April work session.

Mr. Parkin shared information reinforcing the importance of the water system and the need for adequate water rates to provide for the maintenance of the infrastructure. He shared some national data on water systems, and explained that water rates were lower than any other utility. He hoped to explain why the City Council should consider water rate increases.

Mr. LeBaron stated the City had a total of 8 wells, one of which was not operational, which drew from the Troutdale Aquifer. The average daily water use is 2.5 million gallons. The total capacity is 6 million gallons, so there is significant storage capacity in the City's 3 reservoirs. He noted the pump stations on the map, which in some cases help boost pressure for elevation. There was a total of 112 miles of pipe which was continuously monitored. The entire system is managed by 7 people. That additional FTE in this year's budget helped complete the fire hydrant maintenance project that needs to be done every two years. He gave a detailed list of emergency maintenance and construction projects that they have worked on. They look forward to continuing with flushing program and implement a leak detection program. The City exceeds all water quality standards with a good source and well-maintained system.

Mr. Clark referred to the water department's accomplishments.

Mr. Parkin pointed out that specific funding for systematic maintenance had not been considered for the past few years. The cost for operating the utility has gone up more than 2% per year, and recent rate increases had not included infrastructure replacement. The Master Plan coming before the City Council addressed spending \$2 million per year which would require an increase in the double digits. How the rates would be achieved would be part of the budget process while the Master Plan identified the needs. He added there was a \$200,000 shortfall in the current year's budget.

Mayor Ferguson provided information on the high speed passenger rail project and funding.

The group discussed the status of the Willamette Falls Media Center.

Local Contract Review Board Changes

Mr. Ramis gave an overview of public contracting changes that included editorial, state law regulations, and discretionary choices. The changes mandated by state related to prevailing wage and personal service agreements based on qualifications. Discretionary choices included local preference, dollar amounts exempt from processes, contracts exempt from the competitive bid process, and discretion to waive bid bonds.

Mayor Ferguson adjourned the work session 6:35 p.m.

Respectfully submitted



Pat DuVal, Recorder

WORK SESSION

**MILWAUKIE CITY COUNCIL
WORK SESSION
NOVEMBER 15, 2011**

MILWAUKIE CITY HALL

Conference Room
10722 SE Main Street

WORK SESSION – 5:00 p.m.

A light dinner will be served

Discussion Items:

	<u>Time</u>	<u>Topic</u>	<u>Presenter</u>	<u>Page #</u>
1.	5:00 p.m.	City Manager's Report	Bill Monahan	
2.	5:30 p.m.	Overview of City's Social Media Policy	Grady Wheeler	1
3.	5:50 p.m.	Update on the Status of the Water Utility	Gary Parkin & Jon LeBaron	20
4.	6:30 p.m.	Local Contract Review Board Changes	Cindy Phillips, Jordan Ramis	32
5.	6:45 p.m.	Adjournment		

Information

Executive Session: The Milwaukie City Council may meet in executive session pursuant to ORS 192.660(2). 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(3) 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.

Public Notice

- The Council may vote in work session on non-legislative issues.
- The time listed for each discussion item is approximate. The actual time at which each item is considered may change due to the length of time devoted to the one previous to it.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.
- The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities (ADA). If you need special accommodations, please call 503.786.7502 or email ocr@ci.milwaukie.or.us at least 48 hours prior to the meeting.



Agenda Item: WS. 2.
Meeting Date: 11/15/11

To: Mayor and City Council

Through: Bill Monahan, City Manager

From: Grady Wheeler, Public Affairs Coordinator

Subject: Social Media

Date: November 1, 2011 for November 15, 2011 Work Session

ACTION REQUESTED

None requested. Staff's intent is to provide an overview of the City's Social Media Policy, explain how staff currently utilizes Facebook and Twitter and to have a discussion regarding how the City can continue to use these outlets to engage its citizens.

BACKGROUND

The City of Milwaukie activated its Facebook and Twitter accounts in late April of 2011. The Public Affairs Coordinator, Grady Wheeler, and Program Coordinator, Beth Ragel, are the two staff persons currently tasked with publishing content to these sites. Both meet on a weekly basis to forecast upcoming events to post and the Public Affairs Coordinator updates a log to reflect scheduled and published posts. The focus has been on promoting City meetings and community events.

Prior to the launch of the City's Twitter and Facebook accounts staff researched other municipalities' social media policies and generated one for Milwaukie that is substantially based on the policy that's in place in Albany, Oregon. While City staff has worked its proposed policy through the City's channels - the City's Policy Review committee, our City Attorney, Department Heads, AFSME and the Police Union – the Public Affairs Coordinator and Program Coordinator acted as the City's publishers of content.

Moving forward, as the adopted policy states, more emphasis will be placed on encouraging two-way communication through its social media outlets. Furthermore, City Departments will be encouraged, and empowered, to submit content to Twitter and Facebook.

As with requests for information that are submitted through the website, the Public Affairs Coordinator will be the primary responder to questions posted on Facebook and Twitter, and will be closely monitoring posted comments.

CONCURRENCE

The City of Milwaukie Web 2.0 Use Policy has been reviewed and approved by the City's legal counsel and AFSME and the Police Union.

FISCAL IMPACTS

None

WORK LOAD IMPACTS

The Public Affairs Coordinator and Program Services Coordinator will continue to post content to Facebook and Twitter and the Public Affairs Coordinator will continue to monitor posted items. The Public Affairs Coordinator will work with Departments to encourage more postings to the City's social media outlets and will provide basic training to facilitate postings.

ALTERNATIVES

None

ATTACHMENTS

1. City of Milwaukie Web 2.0 Use Policy
2. Social Media Message Schedule and Log

Attachment 1

SUBJECT: CITY OF MILWAUKIE WEB 2.0 USE POLICY (SOCIAL MEDIA)

PURPOSE

Web 2.0 tools occupy the intersection of technology, social networking, and collaboration. In order to reach a broader audience, further the goals of the City, and provide valuable information to the public, City of Milwaukie departments may consider using Web 2.0 tools.

APPLICABILITY

This policy is applicable to Web 2.0 site use on the City's Web site for all City departments, offices, and agencies; personal use of Web 2.0 sites by City employees is subject to the City's general Internet use policies.

POLICY

Definition of Web 2.0: A term used to describe blogs, wikis, social networking sites, and other Internet-based services that emphasize collaboration and sharing, rather than less interactive publishing (Web 1.0). It is associated with the idea of the Internet as platform.

All City of Milwaukie (City) Web 2.0 sites posted by departments will be subject to approval by the department head or designee.

1. The City of Milwaukie Web site (www.cityofmilwaukie.org) will remain the City's primary Internet presence.
 - A. The best, most appropriate uses of Web 2.0 tools fall generally into two categories:
 - i. As channels for disseminating time-sensitive information (example: emergency information).
 - ii. As marketing/promotional channels which increase the City's ability to broadcast its messages to the widest possible audience.
 - B. Content posted to the City's Web 2.0 sites will be considered an extension of the City's main Web presence.
 - C. Content posted to the City's Web 2.0 sites should contain links directing users back to the City's Web presence.
2. The department head or designee will be responsible for approving content and administration of any Web 2.0 sites their department may create.
3. This document is a comprehensive Policy composed of the following Guidelines:
 - A. Acceptable Use of Digital Equipment, Internet and Web 2.0 Applications Guidelines
 - B. Public Comments and Blogging Guidelines.
 - C. Online Privacy and Security Guidelines
 - D. Internet Use Guidelines
 - E. Twitter Guidelines
 - F. Facebook Guidelines
 - G. Video posting Guidelines

4. Any exceptions will be approved by the department head or designee and subject to review by the webmaster.
5. City of Milwaukie Web 2.0 sites shall comply with all applicable [Oregon Administrative Rules](#).
6. City of Milwaukie Web 2.0 sites are subject to State of Oregon [public records laws](#). Any content that is related to City business, including subscribers lists, posts, and comments, is a public record. The Department maintaining the site is responsible for responding completely and accurately to any public records request for public records on Web 2.0, according to the City's public records request policy. Content related to City business shall be maintained in an accessible format so that it can be produced in response to a request (see the City of Milwaukie [Twitter](#) and [Facebook](#) guidelines). Wherever possible, such sites shall clearly indicate that any articles and any other content posted or submitted for posting are subject to public disclosure. Users shall be notified that public disclosure requests must be directed to the City Recorder's Office for proper filing of requests for information.
7. Oregon law and relevant City [records retention schedules](#) apply to Web 2.0 formats and Web 2.0 content. Unless otherwise addressed in specific Web 2.0 standards, the City shall preserve records required to be maintained pursuant to a relevant records retention schedule for the required retention period on a City server, in a format that preserves the integrity of the original record and is easily accessible.
8. Users and visitors to Web 2.0 sites shall be notified that the intended purpose of the site is to serve as a mechanism for communication between City departments and members of the public. City Web 2.0 site articles and comments containing any of the following forms of content shall not be allowed:
 - A. Comments not topically related to the particular social medium article being commented upon;
 - B. Comments in support of or opposition to political campaigns or ballot measures;
 - C. Profane language or content;
 - D. Content that promotes, fosters, or perpetuates discrimination on the basis of membership in a protected class;
 - E. Sexual content or links to sexual content;
 - F. Solicitations of commerce;
 - G. Conduct or encouragement of illegal activity;
 - H. Information that may tend to compromise the safety or security of the public or public systems; or
9. Prohibited Links
 - A. Candidate sites or sites advocating a position on City or other ballot issues.
 - B. Corporate commercial sites. However, non-profit organizations with information on the City's Web site may include links to member or sponsor organizations.
 - C. Individual personal home pages.

10. Web 2.0 Use Policy and guidelines shall be displayed to users or made available by hyperlink.
11. The City reserves the right to restrict or remove any content that is deemed in violation of this Web 2.0 policy or any applicable law.
12. The City will approach the use of Web 2.0 tools as consistently as possible, organization wide.
13. All new Web 2.0 tools proposed for City use will be approved by the City Manager and the webmaster.
14. Administration of City of Milwaukie Web 2.0 sites.
 - A. The City's webmaster will maintain a list of Web 2.0 tools which are approved for use by City departments and staff.
 - B. The City's webmaster will maintain a list of all City of Milwaukie Web 2.0 sites, including login and password information. Departmental staff will inform the webmaster of any new Web 2.0 sites or administrative changes to existing sites.
 - C. The City must be able to immediately edit or remove content from Web 2.0 sites
15. For each Web 2.0 tool approved for use by the City the following documentation will be developed and adopted:
 - A. Operational and use guidelines
 - B. Standards and processes for managing accounts on Web 2.0 sites
 - C. City and departmental branding standards
 - D. Organization-wide design standards
 - E. Standards for the administration of Web 2.0 sites
16. Pursuant to Federal Trade Commission (FTC) guidelines concerning the use of endorsements and testimonials in advertising, City employees must disclose their employment when endorsing City products or services on the Internet (this includes blogging, Facebook, Twitter, etc.). The FTC requirement gives no consideration to the statement being misleading or actually reflecting the employee's honest opinion. The employee must clearly and conspicuously disclose their employment relationship with the City.
17. The Web 2.0 Use Policy will be reviewed annually or as needed to update guidelines related to new social networking tools.
18. Employee Internet activity will be regularly monitored to enforce the Web 2.0 Use Policy; employees misusing the Internet may be subject to disciplinary action up to and including termination.

Bill Monahan, City Manager

Date

City of Milwaukie Acceptable Use of Digital Equipment, Internet and Web 2.0 Application Guidelines

1. City owned digital equipment, access to the Internet, and City provided applications may not be used for purposes prohibited by City of Milwaukie policies, State or Federal law, including (this list is not necessarily inclusive)
 - conducting private business;
 - political campaigning;
 - announcing union membership meetings or conducting other exclusively union business;
 - sharing or storing unlicensed software or audio/video files; or
 - any illegal or inappropriate usage.
2. Digital equipment and all applications must be authorized and installed by appropriate personnel or designee in each City department. Only software or hardware that meets the City's defined standards will be installed unless an exception has been documented in writing. This includes but is not limited to applications specifically designed to communicate electronically.
3. Use of video, audio, image storage, etc. can put a strain on the available resources of the City's networks and bandwidth. Users shall work through Department heads and the Information Technology Supervisor to establish the resource and bandwidth requirements of any new applications or systems prior to use.
4. Use of Internet resources of any kind for which there is a fee, whether accessed via the Internet, email or other applications, must not be accessed or downloaded without prior approval from a supervisor
5. Use of any of Web 2.0 resources must be consistent with applicable records retention requirements and does not imply privacy.
6. Any attempts to avoid detection of Internet activities in conflict with these guidelines is prohibited.
7. Viewing or printing of inappropriate material (see Public Internet Wi-Fi Policy language) such as pornography or violence to an individual or group is prohibited, unless used as part of a business application, such as a Police investigation.
8. Use of Web 2.0 resources may be used infrequently and occasionally for personal use, as long as such use is incidental and does not interfere with your workload, as determined by your supervisor.

Section B: Public Comments and Blogging Guidelines

Introduction

Public Comments allow the public the opportunity to comment on articles related to governance of the City. City blogs facilitate further discussion of those articles related to governance issues by providing the public the opportunity to submit comments regarding the articles. Submission of comments by members of the public constitutes participation in a limited public forum. This policy should be used in conjunction with the City's Web 2.0 Use Policy.

Definitions

For the purposes of this City of Milwaukie Blogging Policy, the following terms are defined as provided below:

- Blog: (an abridgment of the term web log) is a City of Milwaukie Web site with regular entries of commentary, descriptions of events, or other material such as graphics or video
- Blog article: An original posting of content to a City of Milwaukie blog site by a blog author
- Blog author: An authorized City of Milwaukie official that creates and is responsible for posted blog articles (see blog article)
- Blog comment: A response to a City of Milwaukie blog article submitted by a blog commenter
- Blogger: A City of Milwaukie official or member of the public who submits a comment for posting in response to the content of a particular blog article
- Blog moderator: An authorized City of Milwaukie official who reviews, authorizes and allows content submitted by City of Milwaukie blog authors and public commenters to be posted to a City of Milwaukie blog site

Guidelines

1. City of Milwaukie blogs shall be
 - a. approved by the appropriate Department Head;
 - b. published using the approved City blogging platform and tools; and
 - c. administered by Community Services staff.
2. City of Milwaukie blogs and public comments are subject to State of Oregon [public records laws](#) and the City Web 2.0 Use Policy.
3. Relevant [records retention schedules](#) apply to blogs and public comments.
4. The City reserves the right to restrict or remove any content that is deemed in violation of this guideline or any applicable law.
5. Each City of Milwaukie blog shall include an introductory statement which clearly specifies the purpose and topical scope of the blog.
6. All blog sites shall clearly indicate that they are maintained by the City of Milwaukie and shall have City contact information prominently displayed.

7. Bloggers are subject to the City of Milwaukie Acceptable Use of Digital Equipment, Internet and Web 2.0 Applications Guidelines and Online Privacy and Security Guidelines.
8. All City of Milwaukie blog authors and public commenters shall be clearly identified.
9. Bloggers are required to be registered users on the City of Milwaukie Web site.
10. The content of each City of Milwaukie blog shall be administered and maintained by the respective departments.
11. The linked content of embedded hyperlinks within any City of Milwaukie blog articles or blog comments submitted for posting shall be evaluated prior to posting. The City of Milwaukie does not guarantee the authenticity, accuracy, appropriateness, relevance, or security of the link, or Web site.

Section C: Online Privacy and Security Guidelines

Introduction

These guidelines address collection, use, security, and access to information that may be obtained through use of the City's Web site. It is provided for informational purposes only. The information presented here is not meant to be a contract of any type; either express or implied, and should not be treated as such by site visitors. The information in this statement and/or the guidelines described here may change at any time, without prior notice to any visitor.

This notice covers the following topics:

1. Information Collected and How it is Used
2. Personal Information and Choice
3. Public Access to Information
4. Security
5. Electronic Commerce
6. Disclaimer
7. Contact Information

1. Information Collected and How it is Used

Information collected if you only browse this site

The City reserves the right to gather and store visitor information. Browsing, reading pages, and downloading information on the City's Web site initiates a process that gathers and stores certain information about the visit. This information does not identify the visitor personally. The following are automatically collected and stored about the visit:

- a. The Internet Protocol Address and domain name used. The Internet Protocol address is a numerical identifier assigned either to the visitor's Internet service provider or directly to the visitor's computer. The Internet Protocol Address is used to direct Internet traffic to the visitor. This address can be translated to determine the domain name of the visitor's service provider (e.g. xcompany.com or yourschool.edu). Generally, the City only determines visitor domain names if a security issue is suspected;
- b. The type of browser and operating system used by the visitor;
- c. The date and time the visitor visited the site;
- d. The Web pages or services accessed at the site; and
- e. The referring Web site visited prior to coming to the City's Web site.

Information is collected for statistical purposes and to help the City manage website traffic and content, such as assessing what information is of most and least interest, determining technical design specifications, and identifying system performance or problem areas.

"Cookies" are simple text files stored on the visitor's computer by the visitor's Web browser. The City's policy is to limit the use of cookies. However, some of the applications used by the City utilize cookies to confirm the integrity of online transactions, and enhance website performance. Cookies used in this manner do not contain personally identifiable information.

For site security purposes and to ensure that this service remains available to all visitors, the City's Web site employs software programs to monitor network traffic to identify unauthorized attempts to upload or change information, or otherwise cause damage. Except for authorized law enforcement investigations and the security purposes mentioned elsewhere in this notice, no other attempts are made to identify individual visitors or their usage habits. Raw data logs are used for no other purposes and are scheduled for regular destruction in accordance with City [records retention schedules](#).

What the City collects if the visitor volunteers information

If a visitor to the City's Web site participates in a survey, fills out a form, sends an email, participates in a City-hosted mailing list, discussion, other online transaction, the following additional information will be collected:

- a. The email address, and contents of the email
- b. Information volunteered in response to a survey
- c. Information volunteered through an online form for any other purpose
- d. Information volunteered by participating in an online transaction with the City

The information collected is not limited to text characters and may include audio, video, and images that the visitor sends the City.

The City uses the visitor's email address to respond. It is the City's policy to not use the visitor's email address to send unsolicited email unless the visitor specifically elects to receive it. Survey information is used for the purpose identified by the survey. Information from other online forms is used only for conducting City business related to the online form. The City strives to collect the minimum information necessary to comply with applicable law or provide the service requested.

The City does not sell, rent or otherwise distribute visitor information, including electronic mail addresses, to any outside company or organization, unless legally required to do so.

2. Personal Information and Choice

You may choose whether to provide personal information online.

"Personal information" is information about a person that is readily identifiable to that specific individual. Personal information includes, but is not limited to, an individual's name, address, and phone number. A domain name or Internet Protocol address is not considered personal information.

Visitors may choose not to contact the City by email, participate in a survey, provide personal information using an online form, or engage in an electronic transaction. However, some information available through this site is specific to individual visitors, such as online payments and editable content. Visitors interested in viewing this visitor-specific information are requested to sign up for a password-protected account. The choice to not participate in these activities will not impair the visitor's ability to browse, read, or download general information provided on the site.

If personal information is requested on the Web site or volunteered by the visitor, state law and other applicable laws may protect it. However, this information is treated like any other information provided to the City, and may be subject to public inspection and copying if not protected by federal or state law.

If the visitor believes that their personal information is being used for a purpose other than what was intended when submitted, the visitor may contact the person identified in the Contact Information Section of this statement. If the visitor receives information purporting to be from the City but is suspected to be fraudulent, contact the City at 503.786.7503. The City will also never send an unsolicited email containing a link to a City Web site where confidential personal or financial information is requested.

Visitors are cautioned that the collection of personal information requested from or volunteered by minors will be treated the same as information given by an adult, and may be subject to public access.

3. Public Access to Information

In the State of Oregon, [public records law](#) (ORS 192) ensures that government is open and that the public has a right to access appropriate records and information possessed by City government. At the same time, there are exemptions to the public's right to access public records that serve various needs, including the privacy of individuals. Both state and federal laws provide exemptions.

4. Security

The City has taken steps to safeguard the integrity of its data and prevent unauthorized access to information it maintains. These measures are designed to prevent corruption of data, block unknown or unauthorized access to its systems and to provide reasonable protection of private information in our possession.

This information should not be construed in any way as giving business, legal, or other advice, or warranting as fail proof, the security of information provided via the City's Web site.

Unauthorized attempts to upload information or change information on this service are strictly prohibited and may be punishable under federal statutes such as the Computer Fraud and Abuse Act of 1986 and the National Information Infrastructure Protection Act.

5. Electronic Commerce

Increasingly, visitors to the City's Web site have the option to do business with the City over the Web including making electronic payments for goods and services. The City uses appropriate technology and other safeguards to protect financial and other sensitive data.

6. Disclaimer

The City's Web site has links to external Web sites, including links to Web sites operated by other government agencies, nonprofit organizations, and private businesses. When the visitor links to another site, they are no longer on the City's Web site and this Privacy Notice will not apply. When the visitor links to another Web site, they are subject to the privacy policy of that new site. Visitors linking to another site are encouraged to examine the site's privacy policy.

Neither the City, any department, officer, or employee of the City warrants the accuracy, reliability or timeliness of any information published by this system, nor endorses any content, viewpoints, products, or services linked from this system, and shall not be held liable for any losses caused by reliance on the accuracy, reliability, or timeliness of such information. Portions of such information may be incorrect or not current. Any person or entity that relies on any information obtained from this system does so at their own risk.

7. Contact Information

To offer comments about the information presented in this Privacy and Security Guideline, contact the City at 503.786.7503

D. Internet Use Guidelines.

Users of this electronic resource are to act in a responsible and ethical manner, consistent with the educational and informational purposes for which these services are provided. In accordance with federal, state, and local laws and regulations, this service is not to be used for any illegal or criminal purpose, including, but not limited to, accessing legally obscene materials, harassment or stalking, unauthorized access to computer systems, unauthorized file sharing, illegal downloading of copyright protected materials, or in a manner that disrupts the work of other users of this system. Inappropriate materials include but are not limited to pornography and visual content that is sexually graphic or features nudity or extreme violence.

The user will be held responsible for the user's actions, and users are expected to abide by the City's Web 2.0 Use Policy, and any other policies specific to individual departments such as the Library.

The Internet is a decentralized, unmoderated global network; the City of Milwaukie has no control over the content found on the Internet. The City will not censor access to material nor protect users from offensive information, and it is not responsible for the availability and accuracy of information found on the Internet.

Security Warning:

This free Wi-Fi service is an open network provided for your convenience and its use is at your own risk. It is available to the general public, and is not inherently secure. The provider cannot and does not guarantee the privacy of your data and communication while using the service.

There are potentially serious security issues with any computer connected to the Internet, ranging from viruses, worms and other programs that can damage the user's computer to attacks on the computer by unauthorized or unwanted third parties. By using this service you acknowledge and knowingly accept the potentially serious risks of accessing the Internet over an unsecured network. It is recommended that users take steps to protect their own computer system, such as installing current anti-virus software and maintaining appropriate firewall protection. For further information on how to protect yourself on this open network, consult a security professional.

Disclaimer

This service provides access to the Internet on an "as is" basis with all risks inherent in such access. The service is provided on an "as available" basis without warranties of any kind. There is also no guarantee that the service will be uninterrupted or error-free, No advice or information given by the providers, affiliates, or contractors of the service or their respective employees shall create such a warranty.

Under no circumstances shall the providers of the service, or affiliates, agents, or contractors thereof, be liable for any direct, indirect, incidental, special, punitive or consequential damages that result in any way from user's use of or inability to use the service or to access the Internet or any part thereof, or user's reliance on or use of information, services or merchandise provided on or through the service, or that result from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation, or transmission, or any failure of performance. City employees cannot assist in making changes to a user's computer settings or otherwise troubleshoot internet access problems.

By using this free Wi-Fi service, you also agree to all terms set forth above.

8. Twitter Guidelines

Twitter is a micro blogging tool that allows account holders to tweet (transmit) up to 140 characters of information to followers (subscribers). The City tweets information directly to Twitter followers, alerting them to news and directing them to www.cityofmilwaukie.org for more information. These guidelines should be used in conjunction with the City's Web 2.0 Use Policy.

Guidelines

1. The City will have only one Twitter account, administered by the Community Services Department. Additional accounts will be considered by the Community Services Department and the respective department representative.
2. The department's Twitter bio will include appropriate information for identifying the purpose of the account and state that the list of followers is subject to public records law and the City's Online Privacy and Security Guidelines.
3. Twitter accounts shall serve three primary purposes:
 - Get emergency information out quickly
 - Promote City-sponsored events
 - Refer followers to content hosted at www.cityofmilwaukie.org.
4. Information posted on Twitter shall conform to City Internet policies and guidelines. Tweets shall be relevant, timely and informative.
5. Twitter content shall mirror information presented on the City's Web site.
6. Tweets must be composed and posted by Department Heads or their designee.
7. Retention of Tweets will be maintained according to the Web 2.0 Use Policy.

9. City of Milwaukie Facebook Guidelines

Purpose

Facebook is a social networking site, designed to drive traffic to the City Web site and to inform more people about City activities. This guideline should be used in conjunction with the City's Web 2.0 Use Policy.

Establishing a Facebook Account

When a department determines it has a need for a Facebook account, it will submit a request to the Community Services Department Director or designee. Once approved, the Community Services Department Director or designee will create the account and provide administrative information to manage the account.

Guidelines

1. The City will support the creation of Facebook 'pages,' not 'groups.'
2. Main page elements
 - a. Each main page will include a picture, the City's logo, a link to the City's Web site, description of the page content, and default to the Wall to connect users to the freshest content. The following should be included as a boilerplate statement:
This site is intended to communicate between the public and the City of Milwaukie on the listed topics. Any comments submitted to this page are public records subject to disclosure pursuant to public records law.
 - b. Comments shall be allowed at department head discretion. If enabled, the Wall page should include a Comment Policy Box with the following disclaimer:
Comments posted to this page will be monitored under the City of Milwaukie policy. The City reserves the right to remove inappropriate comments.
 - c. Content posted to the Wall shall also exist on the City's Web site.
3. Page administrators
 - a. A successful page requires active administration. The page administrator is the Department Head or designee, and is responsible for monitoring the Facebook page and approving posts.
 - b. The page administrator is responsible for maintaining page content. The Department head will designate a back-up administrator in the designee's absence.
4. Style
 - a. Departments will use proper grammar and avoid jargon and abbreviations. The City's Facebook page is meant to be more informal than other communication tools, but still represents the City at all times.
5. Applications

- a. There are thousands of Facebook applications, many of which are run by third parties. Some applications may be useful to the City's mission but may pose security risks.
 - b. An application should not be used without approval of the Community Services Department Director or designee, having determined that the application comes from a trusted source, serves a business purpose, and adds to the user experience.
 - c. An application may be removed at any time if there is significant reason to think it is causing a security breach, or inconsistent with the City Web 2.0 Use Policy.
6. Retention of Facebook content will be maintained according to the Web 2.0 Use Policy.

10. Video Posting Standard

Purpose

The City of Milwaukie provides access to online video for one or more of the follow goals: provide information about City services, showcase City and community events, explore City issues and highlight outstanding individuals and organizations, and viewing of public meetings. The City encourages the use of video content to further the goals of the City and the missions of its departments, where appropriate. These standards should be used in conjunction with the City's Web 2.0 Use Policy.

Guidelines

1. All video content must reside on a City Web site page, Facebook, or other appropriate location under this Policy.
2. Videos must be produced by the City, permission granted by the producer, or resides in the public domain (e.g.; youtube.com).
3. Video content posted to the City Web site shall be subject to the Web 2.0 Use Policy's records retention guidelines.
4. Video quality should strive to be visually and audibly clear, relevant, and appropriate for public viewing. Low quality video will be considered as long as content is compelling and informative.
5. Video submissions should contain title and description, length, and originating source.
6. Videos posted to the City's Web site shall have comments disabled.

Attachment 2

Social Media Message Schedule & Log

Event/Message	Date of Event	Twitter posted	FaceBook posted	Poster
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April 25-29

Walk Milwaukie				GW
Arbor Day event	04/29/11	4/26 & 4/29	4/26 & 4/29	BR
Energy IQ Workshop	05/07/11	28-Apr	4/26 & 4/28	BR
Milwaukie Riverfront Park renderings			x	GW
Earthquake Drill/Disaster Prep		28-Apr	04/29/11	BR
Historic Photos posted		27-Apr	04/27/11	

May 2-6

Annie Ross House Plant Sale	05/07/11		05/02/11	GW
How Far Can Milwaukie Walk Kickoff	05/11/11		05/03/11	GW
Monroe Street Work	05/02/11		05/03/11	GW

May 9-13

The Dude story	NA	5/10/2011		GW
Façade Improvement Program	NA	5/10/2011	05/10/11	GW
Homewood Work Party	05/15/11	5/10/2011	05/10/11	GW
Light Rail agenda posted	05/11/11	5/11/2011	05/11/11	GW
How Far Can Milwaukie Walk Kickoff	05/11/11	5/11/2011	05/11/11	GW
PCC Road Closure	05/12/11	5/12/2011	05/12/11	GW

May 16-20

Main Street Walk	05/22/11			
Monthly Meeting	05/16/11	5/16/2011	05/16/11	GW
Mayor Contest	05/31/11		05/16/11	GW
Bond Payoff Event	05/21/11	5/18/2011	05/18/11	GW
Mayor's Emergency Video	NA	5/18/2011	05/18/11	GW

May 23-27

Poery Open Mic for teens	05/26/11	5/24/2011	5/24/2011	GW
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May 30-June 3

DLC - PC Meeting Change	06/01/11	5/31/2011	5/31/2011	GW
artMob Photo showcase	06/03/11	6/3/2011	N/A	BR
June Pilot posted	06/01/11	6/1/2011	06/01/11	GW
Down to Earth Day - clip your coupon	06/04/11			
Jefferson St. Boat Ramp Closure	06/06/11	5/31/2011	5/31/2011	GW
Phase I Riverfront	06/06/11		6/1/2011	GW
artMOB Mask making at Milw Elem recap	April	5/31/2011	N/A	BR
Shaka goes prime time	06/02/11	5/31/2011	N/A	BR

June 6-June 10

Lewelling Bike Event	06/06/11	06/06/11	06/06/11	GW
Ard plant sale	06/11/11		06/10/11	BR
Poetry reading	06/09/11		06/09/11	BR

June 13-June 17

docu shred event	06/18/11	06/13/11	06/13/11	GW
WALK MILWAUKIE	06/19/11	06/14/11	06/14/11	GW

Light Rail Bridge images	NA	6/15/2011	06/14/11	GW
Light Rail online video	NA	6/17/2011	06/17/11	BR

June 20 - June 24

Library Expansion Task Force	06/23/11	06/23/11	06/23/11	GW
HM Concerts	06/22/11		06/21/11	BR
Book Sale	06/24/11	06/24/11	06/24/11	GW
Pilot Question	06/24/11		06/24/11	GW

June 27 - July 1

Council awards for Lewelling Bikes	NA		06/29/11	GW
HM Concerts	06/29/11	06/29/11	06/29/11	GW
CodeRed	NA		07/01/11	
Light rail presentation materials	06/29/11	06/29/11	06/29/11	GW

July 5 - July 8

Flushing Program	07/08/11		07/07/11	GW
Library record June	NA	07/08/11	07/08/11	GW

July 11 - July 15

Light Rail Trolley Trail Tour	07/13/11	07/12/11	07/12/11	GW
Milwaukie Daze	07/21/11	07/12/11	07/12/11	GW
Jefferson Boat Ramp closure	07/14/11	07/12/11	07/12/11	GW

July 18 - July 22

Natural Resource Overlay Project	07/19/11	07/18/11	07/18/11	GW
Grabage Rate Increase	07/19/11	07/18/11	07/18/11	GW
PC Meetings	07/26/11	07/20/11	07/20/11	GW
M DAZE	07/22/11	07/20/11	07/20/11	BR
M DAZE	07/22/11		07/19/11	BR

July 25 - July 29

3rd most walkable		07/25/11	07/25/11	GW
Sculpture Garden recruitment			07/26/11	BR

Aug. 1 - 5

Zip car survey		08/02/11	08/02/11	HW
Art a la Carte	08/05/11	08/05/11	08/05/11	BR

Aug. 8 - 12

budget committee			08/09/11	GW
Harry Potter party photos	08/09/11	08/11/11	08/11/11	GW
Incredibles	08/12/11	08/12/11	08/12/11	BR
Mayor goest to jail for MD	08/11/11	08/11/11	08/11/11	GW
Sam Adams and Mil. Baseball	08/11/11	08/11/11	08/11/11	GW

Aug. 15 - 19

DLC Historic Properties	08/16/11	08/16/11	08/16/11	GW
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Aug. 22 - 26

DLC light rail presentation	08/30/11	08/30/11	08/30/11	GW

Aug. 29 - Sept. 2

Katie's art	08/31/11		08/31/11	BR
Lake Road Detours	09/02/11	09/02/11	09/02/11	GW
First Friday	08/31/11		08/31/11	BR

Sept. 5- Sept. 9

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Sept. 12- Sept. 16

Baseball NDA talks	NA	09/15/11	09/15/11	GW
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Sept. 19- Sept. 23

Library expansion survey	09/19/11	09/19/11	09/19/11	GW
Katie article in CR	09/21/11	09/21/11	09/21/11	GW
S Downtown article in DJC	09/21/11	09/21/11	09/21/11	GW

Sept. 16- Sept. 30

Tree Tour	NA	09/28/11	09/28/11	GW
DLC Shelter review	09/28/11	09/28/11	09/28/11	GW

Oct. 3 - Oct. 7

Scarecrow		10/03/11	10/03/11	GW
Jackson Street Event	10/07/11	10/03/11	10/03/11	GW
Jackson Street Event	10/07/11		10/07/11	BR

Oct. 10 - Oct. 14

Speed Sign	NA	10/12/11	10/12/11	GW
state of the city story	10/12/11	10/12/11	10/12/11	GW
BIKE Milwaukie	10/16/11	10/14/11	10/14/11	GW
Scarecrow contest	10/14/11	10/12/11	10/12/11	BR

Oct. 17 - Oct. 21

Baseball Listening Post	10/27/11	10/17/11	10/17/11	GW
Housing Design Open House	10/20/11		10/18/11	BR

Oct. 24 - Oct. 28

Scarecrow contest	NA	10/25/11	10/25/11	GW
Listening post announcement	10/27/11	10/27/11	10/27/11	GW
Listening post recap		10/28/11	10/28/11	GW

Oct. 31 - Nov. 1

Baseball Community forum Facebook site	10/31/11	11/01/11	11/01/11	GW
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Agenda Item: WS 3.
Meeting Date: 11/15/11

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Water System Status Update

Prepared By: Jon LeBaron and Gary Parkin
Dept. Head Approval: Kenneth Asher
City Manager Approval: Bill Monahan
Reviewed by City Manager:

ISSUES BEFORE THE COUNCIL

Informational report to help the council understand the water system as the Water Master Plan will be brought before the Council for adoption in January and highlight the need for rate increases. Also to highlight the work accomplished as a result of this year's rate increase.

STAFF RECOMMENDATION

Review information in preparation for the budget process and the Water Master Plan adoption.

KEY FACTS & INFORMATION SUMMARY

The City owns and operates its own complete water system. The system is aging and requires a rigorous maintenance schedule. There is a need to replace aging water mains. The cost to maintain and update the system is high.

OTHER ALTERNATIVES CONSIDERED

Not applicable for this informational report

CITY COUNCIL GOALS

No direct council goals. The City's fiscal policy is to maintain its physical assets and provide for the orderly and systemic replacement of capital facilities and equipment.

ATTACHMENT LIST

1. Water System Map of capital projects (water main replacements)
2. Rate profile showing Master Plan need, reviewed by the CUAB

FISCAL NOTES

The need for water rate increases is discussed, as well as a shortfall in revenue.



To: Mayor and City Council

Through: Bill Monahan, City Manager
Kenny Asher, Community Development and Public Works Director

From: Jon LeBaron, Operations Director
Gary Parkin, Engineering Director

Subject: Update on the Status of the Water Utility

Date: Oct 31, 2011 for the November 15, 2011 Work Session

ACTION REQUESTED

None. This is an informational report intended to:

- Help the Council understand the water system so it is prepared to consider the Water Master Plan when it is presented in January.
- Convey why rate increases are necessary.
- Highlight what previous rate increases have accomplished.

The water utility rates discussed in this report will be brought before the Council for consideration as part of the budget adoption process.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

June 2011: City Council adopted the FY 2011-12 budget, which included a water rate increase of 15.5% to fund an additional FTE and \$325,000 for capital projects.

April 2011: Staff discussed utility infrastructure with Council at a Study Session, including the need for additional personnel to perform water system maintenance.

BACKGROUND

The City's water system provides one of the City's most important services. The system is maintained and operated primarily in the background so the effort required to provide the service and ensure continued service is largely unnoticed.

The intent of this report and work session is to highlight the many parts that make up the water system, the operational and maintenance activities required to keep it functioning properly, and the cost to replace components of the system as they wear out. Staff has nearly completed an update of the water system master plan, from which much of this information is provided. The master plan update is concluding more than a year long process of reviewing the water system, looking at future needs, hydraulic modeling, determining capital needs, and providing financial analysis. The master plan is scheduled for a December hearing before the Planning Commission. Adoption of the master plan will come before City Council in January 2012.

The City owns and operates the entire water system, from the wells that bring the water up from the aquifer, to the meters that measure water used at the 6,787 individual service connections supplied by the system. Following is an overview of the City's water system.

Supply

The City of Milwaukie's base water supply comes from the Troutdale formation, an extensive aquifer underlying the Portland metropolitan area and a large portion of Clark County, Washington. This aquifer is a deep system of gravels and sandstone with large unconsolidated areas. The City also has two emergency interties with the City of Portland and the Clackamas River Water District (CRW).

Groundwater from two of the City-owned wells is pumped directly into the distribution system after chlorine is added, while water from the other five wells is treated before it is pumped into the distribution system. All of the City's wells have active water rights that are certified through the Oregon Water Resources Department with a permitted capacity of 7.3 million gallons per day (MGD). Average daily use is currently at 2.4 MGD.

Well Facilities

The City of Milwaukie has eight wells. Seven are operational. Well 1 has been permanently decommissioned because of inadequate production. Wells 2 through 8 have a combined production capacity of 4,196 gallons per minute (gpm) or 6 million gallons per day. Water from Wells 2, 3, 4, 5 and 7 have been found to contain elevated levels of volatile organic compounds (VOCs) which are removed using packed tower aeration treatment. Wells 2, 3, and 5 are located close to each other and operate as a single well field, turning on and off together and pumping a total amount of water as permitted by the state Water Resources Department.

Water Reservoirs

The City currently operates one elevated steel reservoir (at 40th and Harvey), one ground level steel reservoir (Stanley Reservoir), and one ground level concrete reservoir (at 40th and Harvey). The City has a total above-ground storage capacity of 6.0 million gallons.

Pumping Stations

The City of Milwaukie maintains transfer pump stations and two booster pump stations to provide proper pressure and to move water through the system. The booster pump stations are located at Lava Drive and Well 6.

Distribution System

There are approximately 112 miles of water main pipeline in the City that range in size from 1 to 18 inches in diameter. There are 6,787 water service lines that range in size from ¾ to 6 inches in diameter. There are 121 fire lines serving commercial properties that range in size from 2 to 12 inches in diameter. The City operates several pressure reducing stations to manage four distinct pressure zones. Remote operation and monitoring of the system is controlled at the Johnson Creek Facility by means of a supervisory control and data (SCADA) telemetry system.

Maintenance and Operation

Proper maintenance of the system is required to ensure both sufficient water flow and quality. The Water Division operates and maintains the system. The Water Division is comprised of a supervisor, one utility worker crew leader, three utility workers, one water quality coordinator, and one utility specialist.

There are many important tasks necessary to ensure the efficient operation of the water system. On the distribution side, valves, fire hydrants, meters and other devices are monitored and maintained to ensure optimal performance. For the supply portion of the system, the Water Division performs reservoir cleaning and repainting, pump station maintenance, pressure reducing station overhaul, well-servicing, and water quality testing. These tasks require a fully staffed crew to ensure the citizens have safe drinking water.

In previous discussions with the Council regarding water rate increases, Staff indicated that the 3.5% portion of the rate increase would fund the addition of one FTE. The Water Division hired Mark Odell, Utility Worker I, in August 2011, increasing the water field crew from three to four utility workers. This increase has improved the effectiveness and thoroughness of the water system maintenance.

The most immediate effect of the hiring has been that the Water Division was able to complete its fire hydrant maintenance program in August, within the Clackamas County Fire District #1 standard timeline. Additionally, having a four-person crew enabled the Water Division to reinvigorate its valve maintenance program, which requires a two-person crew, while simultaneously leaving another two-person crew available to make repairs and respond to other duties or emergencies such as water main breaks. Finally, the Water Division has several activities that require a three-person crew. The Water Division can now complete three-person tasks, such as fire hydrant installation and valve replacement, while leaving one person available to perform unscheduled work, such as utility locates.

Mark will continue to be an invaluable addition to the Water Division's efforts to keep the City's valves and hydrants in peak condition. The Water Division will also use Mark to begin doing more small construction jobs to upgrade and enhance the water distribution system, such as blow off repair and installation, mainline flushing, leak detection, and upgrading aging/failing service lines. In the past, the Water Division had to rely on the Water Supervisor to work in the field with the crew to ensure proper construction. For example, on the King Road Waterline Replacement project, the Water Division had the technical ability but not enough available labor to conduct the project without the Supervisor being in the field. As the Water Division has become more involved in assisting Engineering with CIP projects¹, Mark will provide necessary assistance by potholing mainline configurations, cleaning out and isolating valves and meter boxes to prepare for shut-downs, and notifying customers and shutting off meters during shut-downs.

The Water Division has accomplished the following routine maintenance and unscheduled repairs so far in calendar year 2011:

- 3 emergency water main breaks (radial crack).
- 1 water main leak repair (bell joint).
- 7 emergency service line breaks requiring line replacement.
- 3 emergency service line breaks repaired.
- 3 new service lines installed.
- 2" main line abandoned on Lake Rd.
- 2 new fire hydrants installed.

¹ Assistance is provided by locating and potholing during plan development, and performing service bypasses, main line shutdowns, and service shutdowns during construction.

- 6 fire hydrants upgraded with pumper port capability.
- 404 fire hydrants inspected and maintained for optimal operation.
- 99 fire hydrants repaired, found during PM (preventative maintenance).
- 92 water valves repaired, mostly replacing damaged valve cans.
- 78 water valves exercised (PM) and inspected for optimal operation.
- 75 water meter box connections repaired.
- 121 water meters replaced/upgraded.
- 4 water meters pulled for demolition of properties.
- 186 door hangers placed for delinquent utility accounts.
- 36 customers were shut off for non-payment.
- 447 final reads were taken for billing purposes.
- 317 customers were checked for plumbing leaks.
- 312 miscellaneous City Hall requests (pressure problems, turn on/off for repairs, gather meter information to update asset or billing records).
- 1,387 utility locates were completed.

The Water Division also accomplished the following major items so far in calendar year 2011:

1. Water mainline uni-directional flushing of approximately a third of the water distribution system. The maintenance crew identified and maintained valves to isolate sections of the distribution system to allow water with enough velocity to scour the insides of the water mains. The crew located several of the blow off assemblies to adequately flush the stirred up sediment in the main out of the dead ends, limiting discolored water impact to customers. This was extremely successful, effectively eliminating the excessive discolored water that had accumulated from never flushing the system with velocity in the past.
2. Fire hydrant maintenance was completed in two years, which is the Best Management Practice (BMP) for a higher safety rating with CCFD #1. This round of PM the crews installed asset identification tags on all fire hydrants for better asset management tracking.

3. The valve maintenance program was implemented, beginning with maintenance grid F5, which is the Cedarcrest area. This kicked off on October 6, 2011 after the peak demand water use was over for the year. Of the 100 valves in the map grid, maintenance has been completed on 73. Some of the problems found in this first grid were 19 cans full of debris that had to be cleaned out in order to operate the valve. Also discovered were eight valve cans that were completely buried, 12 valve cans needing replacement and/or adjustment to meet grade, and two valves with the operating nut sticking out of the asphalt where cars can drive on them. Since regular valve maintenance has not been done before, the need for extensive repairs has been identified.

4. Assisted Engineering with 42nd Ave water line CIP project. The maintenance crews potholed multiple configurations throughout the project to allow the project manager to create accurate project plans. This helps keep the project on budget and limits the amount of change orders that can occur anytime the project plans differ from field conditions. Also, the maintenance crews identified and cleaned out valve cans and meter boxes to assist in timely and precise main line shutdowns.

5. Assisted Engineering with Harrison Street Phase I water line CIP project. The maintenance crews have been identifying and cleaning out valve cans and meter boxes to assist in timely and precise main line shutdowns. Complex utility locating was needed on this project at the intersection of 32nd Avenue and Harrison Street because of the control valve in the intersection that separates pressure Zones 1 and 2. There are multiple water main lines that require more precise locating of service lines to determine which mains are serving each property meter.

Primary objectives of the Water Division for FY 2012 include:

1. Upgrade 76 fire hydrants to have pumper port capabilities.
2. Upgrade 23 more water meters.
3. Replace 387 residential galvanized service lines that are corroded and failing.
4. Replace 115 commercial galvanized service lines that are corroded and failing.
5. Replace copper service lines that are starting to fail from corrosion issues associated with PVC and C900 water mains. There are several hundred of these services, which crews have been replacing as leaks are detected in the newer copper. Many of these lines are failing after 10-15 years.
6. Repair/replace/maintain the 78 known blow off assemblies which are used to flow stagnant water from dead end pipes. Several more are suspected to be buried and

broken. There are also several dead end water mains that need to have blow off assemblies installed.

7. Remove all old fire hydrants that were installed as a blow off assemblies but don't meet fire standards. Actual blow off assemblies will be installed at these locations. There are approximately 10 of these known in the system.
8. Large meter testing every other year for meters serving our top twenty water users.
9. System wide leak detection surveying every other year to minimize water loss.
10. The flushing program needs to be implemented for the other two-thirds of the City distribution system to clear sediment and enhance water quality. This needs to be done every two to three years system wide.

As indicated above, the maintenance and operation of the City's water system is a huge and complex undertaking that requires the Water Division to operate as efficiently as possible. The Water Division maintains its plumbing inventory and keeps a warehouse stocked to make repairs timely and efficiently. The Division's personnel attend training to maintain the Continuing Education Units (CEUs) needed for waterworks certifications and to become more expert in water technology and drinking water regulations. The crew attends safety training frequently to maintain knowledge and awareness for daily work hazards such as confined space entry, trench cave-ins/excavation, flagger for traffic control, first aid/CPR, and heavy equipment operation.

Capital Replacement

Another important consideration in the maintenance of the water system is the replacement of the system components as they wear out. A significant effort is needed to replace pipelines and other infrastructure as it wears out. A Capital Improvement Plan (CIP) was developed as part of the Water Master Plan to show the replacement expense and schedule projects to replace infrastructure as it wears out.

The bulk of the additional revenue from this year's 15.5% rate increase is allocated to funding the capital improvements. This year's capital improvement budget of \$325,000 was largely funded by the rate increase. There is a single project in the budget this year, the Harrison Street water main replacement project. The project replaces a lead-jointed pipe that has suffered from leaks and interior rusting. The project is planned for two phases because of its cost. This phase will cost \$570,000 with funding from the Water fund and the Water SDC fund.

As part of the water master plan update, a rate study was recently completed. The study determined an annual capital improvement need of \$2 million, mostly for pipeline

replacement. The primary considerations behind the recommendation are the age of the system, its current condition, and capacity issues. The master plan capital improvement recommendation is consistent with the City's Fiscal Policies which state:

The City will maintain its physical assets at a level adequate to protect the City's capital investment and to minimize future operating maintenance and replacement costs. The City recognizes that deferred maintenance increases future capital costs, thus placing a burden on future residents. Therefore, the CIP will include an orderly and systemic replacement of capital facilities and equipment.

Attachment 1 is a map from the master plan showing the main lines scheduled for replacement in the next 10 years.

The Citizen's Utility Advisory Board (CUAB) was asked to review the recommendation and the corresponding rate impact. The CUAB recommended a rate profile that kept the rate increase at a consistent amount, gradually accumulating a fund balance that will support the recommended capital improvement funding level of \$2 million (see attachment 2).

Funding the capital replacement is always an issue as deferring the cost can usually be done without immediate consequence. Milwaukie is in the position of having to play catch up as replacement funding has not been accumulated. The water system has aged to the point where leaks and water quality issues demand attention. Deference is no longer inconsequential.

As water rates are considered, an emerging issue is a deficit that has come to light in last year's revenue (FY 2011) of about \$200,000. This shortfall of about 9% from what was anticipated will be difficult to recover from in the current year. The shortfall is likely to result in a year end deficit of \$136,000. Budgeting law requires that the fund be in the black by the end of the following year. Although the full impact and its resolution have not been determined, balancing the fund will almost certainly affect the capital replacement funding.

CONCURRENCE

The CUAB concurs with the need to maintain the water system and, recognizing the need to replace deficient components of the water system, recommended the rate profile shown in attachment 2 to fund the Master Plan identified need.

The Finance Department provided information related to the Water Fund balance and the deficit anticipated in the water fund. Some preliminary information about the effect to the water fund has been discussed; further discussion is needed to finalize a plan of action.

FISCAL IMPACTS

Properly operating and maintaining the City's water system requires a funding level that is higher than the current revenue stream is able to cover. This report points out the need for water rate increases.

A rate increase has a direct impact on the utility bill paid by users, approximately \$1.25 per month for every 5% increase. The lack of water utility funding is initially detrimental to the capital improvement plans, retaining deteriorating infrastructure, and adding to the deferred maintenance of the water system.

Water rates will be considered as part of the budget process.

WORK LOAD IMPACTS

As shown in this report, water rates have a direct correlation on the work load. The work load to operate and maintain the water system requires the personnel currently funded.

The capital needs of the water system generate work for both the Engineering Department and the Public Works Operations Department. Current work plans for these departments can accommodate about \$500,000 of projects. Adding projects beyond this level, as needed to properly maintain the system, is possible with the use of engineering and inspection consultants.

ALTERNATIVES

Not applicable to this informational report.

ATTACHMENTS

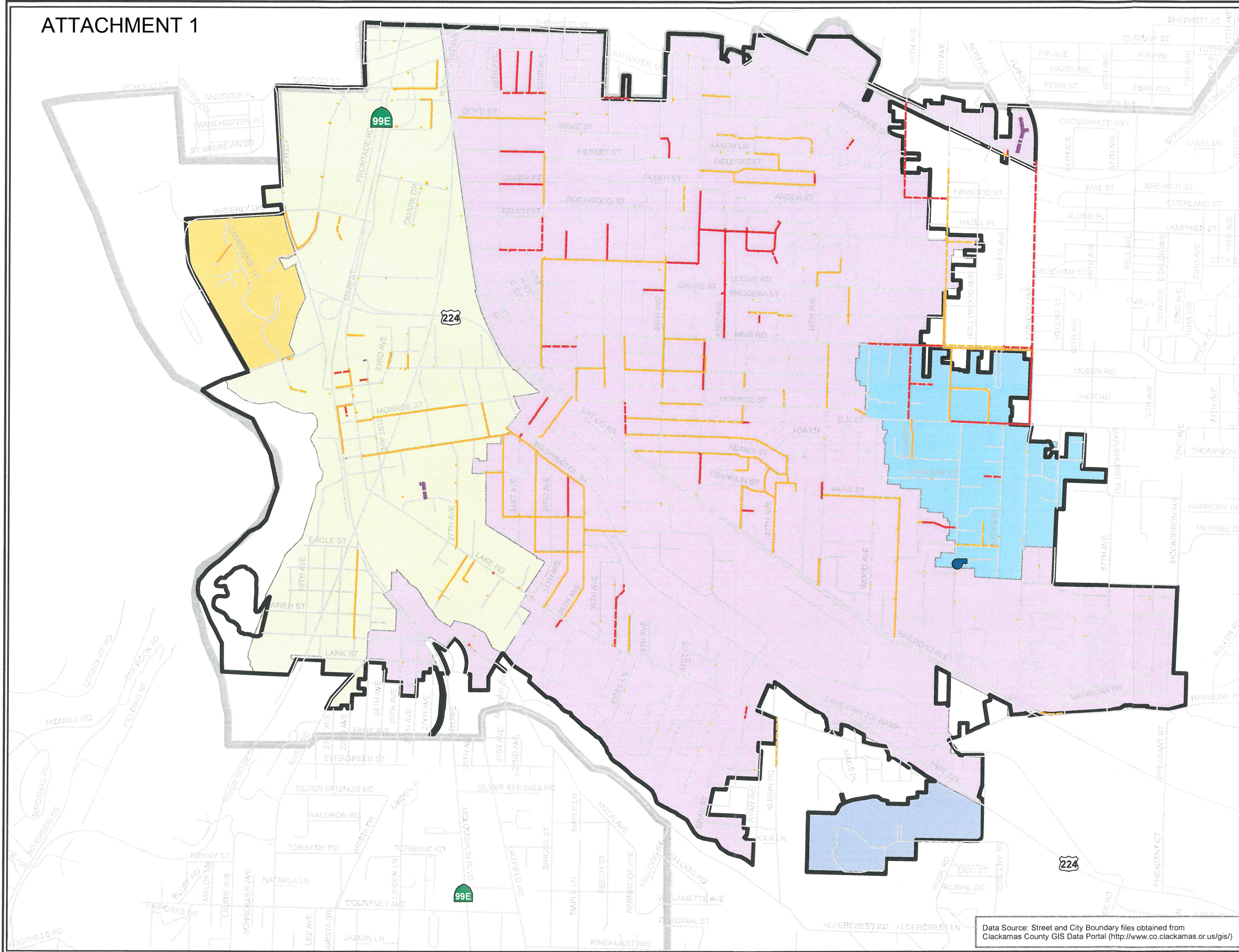
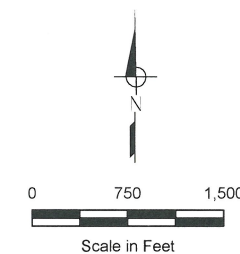
1. Map of Capital Improvements
2. Rate profile

ATTACHMENT 1

FIGURE 9-1

City of Milwaukie 2010 Water System Master Plan

EXISTING SYSTEM IMPROVEMENTS



- LEGEND**
- Public Area Fire Flow Improvements (FF01-FF02)
 - CIP Pipeline Improvements (FF03)**
 - 4-inch Diameter, Pre-1960
 - 6-inch Diameter, Pre-1960
 - 4-inch Diameter, Year Unknown
 - 6-inch Diameter, Year Unknown
 - Zone 3 Fire Flow Pumps
 - City's Pressure Zone Boundary**
 - Zone 1
 - Zone 2
 - Zone 3
 - Zone 4
 - Clackamas River Water
 - City Boundary
 - Urban Growth Boundary
 - Street

Data Source: Street and City Boundary files obtained from Clackamas County GIS Data Portal (<http://www.co.clackamas.or.us/gis/>)



ATTACHMENT 2

2 Million Dollar/Year Capital Improvement Plan Summary

Fiscal Year	Equal Rate Increase -1 Year				Equal Rate Increase - 10 Year			
	Rate Increase	Water Rate		Available Capital	Rate Increase	Water Rate		Available Capital
		Increase	Total			Increase	Total	
Current Year	15.50%	--	\$17.30	\$389	15.50%	--	\$17.30	\$389
2012-13 +1	70.00%	\$12.10	\$29.40	\$2,040	11.00%	\$1.90	\$19.20	\$571
2013-14 +2	3.25%	\$1.00	\$30.40	\$2,080	11.00%	\$2.10	\$21.30	\$778
2014-15 +3	3.25%	\$1.00	\$31.40	\$2,121	11.00%	\$2.30	\$23.60	\$984
2015-16 +4	3.25%	\$1.00	\$32.40	\$2,162	11.00%	\$2.60	\$26.20	\$1,191
2016-17 +5	3.25%	\$1.10	\$33.50	\$2,229	11.00%	\$2.90	\$29.10	\$1,421
2017-18 +6	3.25%	\$1.10	\$34.60	\$2,248	5.75%	\$1.70	\$30.80	\$1,604
2018-19 +7	3.25%	\$1.10	\$35.70	\$2,292	5.75%	\$1.80	\$32.60	\$1,810
2019-20 +8	3.25%	\$1.20	\$36.90	\$2,337	5.75%	\$1.90	\$34.50	\$2,017
2020-21 +9	3.25%	\$1.20	\$38.10	\$2,383	5.75%	\$2.00	\$36.50	\$2,223
2021-22 +10	3.25%	\$1.20	\$39.30	\$2,454	5.75%	\$2.10	\$38.60	\$2,454
First 5 Year Average	16.60%	\$3.24		\$2,126	11.00%	\$2.36		\$989
10 Year Average	9.93%	\$2.20		\$2,235	8.38%	\$2.13		\$1,505

Fiscal Year	Equal Rate Increase -5 Year				Equal Fee Increase -5 Year			
	Rate Increase	Water Rate		Available Capital (1000's)	Rate Increase	Water Rate		Available Capital (1000's)
		Increase	Total			Increase	Total	
Current Year	15.50%	--	\$17.30	\$389	15.50%	--	\$17.30	\$389
2012-13 +1	15.25%	\$2.60	\$19.90	\$735	18.79%	\$3.25	\$20.55	\$735
2013-14 +2	15.25%	\$3.00	\$22.90	\$1,105	15.82%	\$3.25	\$23.80	\$1,105
2014-15 +3	15.25%	\$3.50	\$26.40	\$1,475	13.66%	\$3.25	\$27.05	\$1,475
2015-16 +4	15.25%	\$4.00	\$30.40	\$1,845	12.01%	\$3.25	\$30.30	\$1,845
2016-17 +5	15.25%	\$4.60	\$35.00	\$2,229	10.73%	\$3.25	\$33.55	\$2,229
2017-18 +6	2.00%	\$0.70	\$35.70	\$2,248	3.00%	\$1.05	\$34.60	\$2,248
2018-19 +7	2.00%	\$0.70	\$36.40	\$2,292	3.00%	\$1.00	\$35.60	\$2,292
2019-20 +8	2.00%	\$0.70	\$37.10	\$2,338	3.00%	\$1.10	\$36.70	\$2,338
2020-21 +9	2.00%	\$0.70	\$37.80	\$2,383	3.00%	\$1.10	\$37.80	\$2,383
2021-22 +10	2.00%	\$0.80	\$38.60	\$2,454	3.00%	\$1.10	\$38.90	\$2,454
First 5 Year Average	15.25%	\$3.54		\$1,478	14.20%	\$3.25		\$1,478
10 Year Average	8.63%	\$2.13		\$1,911	8.60%	\$2.16		\$1,911

Fiscal Year	Equal Rate Increase - 10 Year , 1.5M @ 5 Year				Equal Fee Increase - 10 Year, 1.5M @ 5 Year			
	Rate Increase	Water Rate		Available Capital (1000's)	Rate Increase	Water Rate		Available Capital (1000's)
		Increase	Total			Increase	Total	
Current Year	15.50%	--	\$17.30	\$389	15.50%	--	\$17.30	\$389
2012-13 +1	12.50%	\$2.20	\$19.50	\$625	14.45%	\$2.50	\$19.80	\$625
2013-14 +2	12.50%	\$2.40	\$21.90	\$885	12.63%	\$2.50	\$22.30	\$885
2014-15 +3	12.50%	\$2.70	\$24.60	\$1,145	11.21%	\$2.50	\$24.80	\$1,145
2015-16 +4	12.50%	\$3.10	\$27.70	\$1,405	10.08%	\$2.50	\$27.30	\$1,405
2016-17 +5	12.50%	\$3.50	\$31.20	\$1,688	9.16%	\$2.50	\$29.80	\$1,688
2017-18 +6	4.50%	\$1.40	\$32.60	\$1,817	5.75%	\$1.70	\$31.50	\$1,817
2018-19 +7	4.50%	\$1.50	\$34.10	\$1,970	5.75%	\$1.80	\$33.30	\$1,970
2019-20 +8	4.50%	\$1.50	\$35.60	\$2,123	5.75%	\$1.90	\$35.20	\$2,123
2020-21 +9	4.50%	\$1.60	\$37.20	\$2,276	5.75%	\$2.00	\$37.20	\$2,276
2021-22 +10	4.50%	\$1.70	\$38.90	\$2,454	5.75%	\$2.10	\$39.30	\$2,454
First 5 Year Average	12.50%	\$2.78		\$1,150	11.51%	\$2.50		\$1,150
10 Year Average	8.50%	\$2.16		\$1,639	8.63%	\$2.20		\$1,639



Agenda Item: WS. 4.
Meeting Date: 11/15/11

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Public contracting rules update and delegation of authority update

Prepared By: City Attorney

Dept. Head Approval: Casey Camors

City Mgr. Approval: Bill Monahan

ISSUE BEFORE THE COUNCIL

Shall Council update its local contract review board rules to include legislative changes which have been enacted since the date of adoption of the local rules, to wit: 2006? Also, shall Council update the City Manager's authority to sign contracts on behalf of the City?

STAFF RECOMMENDATION

Staff recommends that City Council conduct a work session over the proposed rules, incorporated into a resolution and accompanied by findings. Staff also recommends that Council update the delegated authority of the City Manager to sign contracts on behalf of the City.

KEY FACTS & INFORMATION SUMMARY

This agenda item presents two matters relating to public contracts. First, shall Council approve an ordinance updating the delegation of authority to the City Manager by increasing the dollar value of contracts over which the City Manager has discretion to sign? Second, shall Council adopt changes to the City's Local Contract Review Board Rules, to keep the rules up-to-date with the public contracting laws?

OTHER ALTERNATIVES CONSIDERED

City may decide not to increase the dollar amount of the delegated authority of the City Manager. That would mean that all the contracts that the City Manager is prevented from signing now but could sign if the delegation were changed, will go to Council for review and approval. In addition, Council could proceed with existing rules, but several exemptions that are allowed by law but not allowed under the local rules will not inure to the benefit of the City. This means that the City would have to conduct more expensive and slow formal competitive procurements than it would if it adopted the statutory changes. It also means that, since the statutory procedures have also changed in some respects, there are inconsistencies between the local rules and the public contracting laws.

Such inconsistencies should be avoided to lessen potential liability for the City. Council may also parse the policy choices embodied in these rules, approving some changes and policies and rejecting others.

ATTACHMENT LIST

1. STAFF MEMORANDUM
2. PROPOSED RESOLUTION
3. PROPOSED ORDINANCE
4. PROPOSED RULES AND FINDINGS
5. REDLINE OF RULES

FISCAL NOTES

There is no direct cost to these changes. The intended result is cost savings over time.



To: Milwaukie City Council

Through: Casey Camors, Finance Director

From: Cindy Phillips, City Attorney's Office

Subject: Work session: Consideration of two issues pertaining to public contracting:
1) Updating delegated authority to the City Manager
2) Amending the City's public contracting rules

Date: November 2, 2011

INTRODUCTION

Staff requests that the Council consider two public contracting matters. First, staff proposes that Council update the signatory authority delegated to the City Manager under 3.05.060. Second, staff proposes that Council consider approval of changes to the local contract review board rules, or PCR.

The proposed change to Milwaukie Code Section 3.05.060 to update the City Manager's authority to sign contracts under certain circumstances is a labor- and time-saving move for the City Council. Currently, the City Manager has been delegated the authority to sign contracts, the value of which is less than \$25,000, without specific delegation from Council. Every contract for \$25,000 or less can be signed by the City Manager, so long as the preconditions in the code section have been met. For this reason, smaller contracts do not need to take Council's time in a public meeting.

The \$25,000 cap was adopted in approximately 2006, when the City renovated its older contract review board rules to comply with the massive change in public contracting rules, brought on by legislative changes effective March 5, 1995. Since 2005 or 2006, prices have escalated and the needs of the City of Milwaukie have grown. A cap of \$25,000 on the authority of the City Manager to sign is a very low cap, meaning that more and more contracts are coming to the City Council to sign during its public meetings. The dollar amount that Council would like to place as an upward limit is strictly up to Council; however, the City Attorney's office would suggest that, in order to

keep the delegated authority similar to the formal competitive procurement process threshold of the local contract review board rules would be a good idea. It doesn't make a lot of sense to have an informal competitive process to determine vendor selection but require Council to execute the document, instead of the City Manager.

The second proposal for Council to address arises from the basic premises of public contracting laws. Public policy dictates that cities such as Milwaukie should pay the least cost for useful goods and services. Vendors from whom the City makes purchases should be chosen in an open and fair manner to encourage competition, so that different vendors may compete for contracts, and public funds are spent without favoritism. However, not every public contract is required to undergo the expense of formal competitive procurement. In certain instances it benefits the public to procure goods and services in an expedited way without spending money for staff time and media services necessary to launch a competitive bidding process. The Legislature recognizes this and has provided for various exemptions from competitive procurement, most recently in the field of procurements for architectural, engineering, land surveying, photogrammetric, transportation planning and related services. In order to take full advantage of the exemption from competitive procurement, the City needs to adopt local contract review board rules to incorporate the legislative changes into the local rules.

DISCUSSION

The above background informs the purchasing updates that staff is requesting. The updates are summarized below.

A. Updated contract signing authority delegated to the City Manager

This is a proposal to update the City Manager's contracting authority. The authority is based on contract value. It has not been updated since 2006. The primary rationale for this change is that the current dollar value of \$25,000 is out of proportion to the managerial authority vested in the City Manager by the Code and Charter, especially at today's contract types and prices. Staff will develop some specific examples to discuss at the work session. The proposed change will be effectuated by an ordinance amending the City Code. The proposed cap on the City Manager's signatory power is \$150,000 per contract.

In considering the update to this code section, it is important to recall that the City Manager's authority is not and has never been *carte blanche*. To the contrary, the City Code—which will remain applicable to this update—imposes important limits and those limits will remain in place under this code amendment. First, public contracts entered into under this delegated authority must procure an item already contemplated by the adopted budget, meaning Council has already approved the general nature of the purchase. Second, the City Manager must develop written findings as to why the purchase follows Council purchasing rules, and the purchase must contain a record of compliance with the rules; these components supply a close equivalent to a purchase made by a public Council process. Finally, the purchase under discretion must be

limited to a single item or contract, and cannot be used to purchase a component of contract unless the contract is for personal services. Thus, the Code requires that the delegated authority is not without standards by which to measure the City Manager's discretion.

B. Updated LCRB (local contracting review board) rules

Since 2006 the City Council of Milwaukie, acting as the local contracting review board, has procured goods and services under City-specific rules. Council enacted these rules in lieu of the Attorney General's model rules for contracts. It is not a matter of the statewide rules lacking wise policy, for they do not; Council has merely taken advantage of the State's grant of authority to enact specific rules for the City's needs.

The most recent update enacted by the City was in 2006. The main points captured in the proposed changes include the following:

- Increase public works bidding exemption from \$50,000 to \$100,000
- Increase threshold of "intermediate" exemption—which are the City's rules for collecting three competitive bids in lieu of full competitive processes—from either \$50,000 or \$100,000 (depending on the code section – there is an inconsistency currently in the code) to \$150,000.
- For small contracts (under \$5,000) and intermediate contracts (again, currently at \$50,000 or \$100,000 and proposed to be \$150,000), allow amendments that could change to value to exceed the rule, so long as the rule is not exceeded by 25% of the original contract value. At present staff is somewhat hampered by the rules in amending smaller contracts. Staff proposes to cap the allowed amendments at 25% of the original price. This will result in more effective contract management.
- Enlarge the exemption for affirmative action contracts to include contracts with firms with programs for disabled military veterans (as provided by statute), and enlarge the dollar value of these affirmative action contracts from \$100,000 to \$150,000, a limit also allowed by statute.
- Clarify the procedures for special class and individual exemptions (like Council used to approve the Baseball feasibility contracts) so that Milwaukie rules more closely embody state law terminology, procedure and analysis.
- Where a product is very unique, and thus manufactured or sold by a single provider, increase the exemption to procure such an item from \$25,000 to \$150,000. State contracting laws do not provide a cap for this type of purchase.
- Update the local rules to remove an outdated reference to a bid advertising network and substitute in its place the current network, known as ORPIN (Oregon Procurement Information Network).
- Include a new preference for vendors offering goods or services produced wholly in Oregon, provided the price is no more than 10% the price offered in contracts without this exclusive local origination. This preference was enacted during the 2011 legislative session.
- Enact a local rule to allow the City to use qualifications based selection (QBS) for contracts for screening and selection of architects, engineers, land surveyors,

photogrammetrists, transportation planners and vendors of related services. This particular rule also provides for an exemption from competitive procurement for contracts such as these, the value of which is \$100,000 or less and a modified QBS approach for contracts between \$100,000 and \$250,000.

- Eliminate the \$50,000 cap on emergency contracts (circumstances that present imminent risks to property or public health and have been so declared by the City Manager).
- Other changes to the rules implement state law provisions. Staff has also prepared findings for adoption by Council of the various rule changes. Those findings are attached to the resolution and labeled Exhibit B.

CONCLUSION

Staff requests that the Council consider the proposed rule changes, consider the proposed Resolution with its exhibits and the Ordinance, and conduct a work session with City staff.

ATTCHMENT 2

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, ADOPTING AMENDED PUBLIC CONTRACTING RULES AND FINDINGS

WHEREAS, the City of Milwaukie adopted updated local public contracting rules on or about January 3, 2006; and

WHEREAS, since 2006, the legislature has adopted new statutes applicable to public contracting and revised rules have been drafted to comply with the new statutes; and

WHEREAS, the City Council has determined and is still of the opinion that the revised draft rules better suit the needs of the City than the proposed Attorney General Model Rules; and

WHEREAS, the City of Milwaukie 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 and revisions thereto, consistent with the state Public Contracting Code;

NOW, THEREFORE, BE IT RESOLVED by the City of Milwaukie, Oregon:

Section 1. The City Council, sitting as the local contract review board for the City of Milwaukie, hereby adopts the rules attached as Exhibit A pursuant to the authority granted the Board by Milwaukie City Code Chapter 3.05, Local Contract Review Board. These rules shall apply to all contracting, purchasing, and disposing of surplus personal property by the City of Milwaukie.

Section 2. The Local Contract review Board adopts the findings in support of the amended exemptions included in Exhibit B.

Section 3. The City of Milwaukie continues to opt out of the Attorney General Model Public Contracting Rules.

Section 4. 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 January 1, 2012. However, the public contracting rules in existence prior to this resolution shall remain in effect as to any contract entered into prior to January 1, 2012, or for which invitations to bid or requests for proposals are or have been advertised prior to January 1, 2012.

Introduced and adopted by the City Council on _____, 2011.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

ATTACHMENT 3

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 3.05, LOCAL CONTRACT REVIEW BOARD, TO UPDATE DELEGATION OF AUTHORITY TO CITY MANAGER

WHEREAS, the City Council finds that the City Manager's delegation of authority to obligate the City periodically requires review and updating; and

WHEREAS, the delegation of authority to the City Manager has not been updated since 1996;

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Section 3.05.060, Delegation of Authority to Obligate City, of the Milwaukie Municipal Code is amended to read as follows:

"3.05.060 Delegation of Authority to Obligate the City. The City Manager or his or her designee may enter into a public contract or personal services contract which does not exceed ~~twenty-five~~ one hundred thousand dollars (\$~~25,000.00~~100,000.00) without specific Council approval, provided the obligation is part of an adopted budget, the rules of the Board are satisfied by written findings and a record is made of the transaction which shows compliance with the rules. The City Manager may sub-delegate authority to department heads and other City employees, subject to the same conditions as the delegation to the City Manager. This delegation of authority shall be subject to the limitations of Section 3.05.070."

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

ATTACHMENT 4

EXHIBIT A

CITY OF MILWAUKIE

LOCAL CONTRACT REVIEW BOARD RULES

The following Public Contracting Rules (PCR) have been adopted by the City Council acting as the Local Contract Review Board pursuant to the authority granted to the Board by Municipal Code Section 3.05. The rules apply to all contracting, purchasing, and disposing of personal property by the City of Milwaukee but do not apply to acquisition, sale or other transfer of real property.

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CITY OF MILWAUKIE LOCAL CONTRACT REVIEW BOARD

PUBLIC CONTRACTING RULES

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 and 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. 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 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:

- | | |
|--------|-------------------------------------------------------------|
| 10.015 | Exemption of Contracts under Certain Dollar Amounts |
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| 10.025 | Library Periodicals |
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10.100	Ammunition
10.105	Public Improvement Contracts Involving Design or Construction Management
10.110	Individual Exemptions
10.115	Class Exemptions
80.010	Emergency Contracts

B. As used in this Section:

1. "Board" means the City of Milwaukie Local Contract Review Board.
2. "City" or "The City" means Milwaukie, 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. "Personal property" means everything subject to ownership which is not real property and has exchangeable value.
7. "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.
8. "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.
9. "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.

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

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

12. "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 With an Estimated Value 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 estimated value of the contract does not exceed \$150,000. 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 estimated 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 estimated value of the contract does not exceed \$5,000, 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 estimated value of the contract does not exceed \$150,000, 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 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. However, each order of library materials for the City library shall be considered a separate contract and may be made by using the small contract or intermediate contract procedures if within the dollar amounts for those procedures.

F. Amendment of Small and Intermediate Contracts

A contract awarded under the small or intermediate contract procedures may not be amended if the amendment would result in a total contract price that exceeds 25% of the value of the initial 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.

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 \$150,000 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 \$150,000 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 Single Seller of Product or Service

A. General

The City may purchase without a formal competitive process if there is only one 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 or acting, interim or temporary City Manager. To the extent reasonably practical, the City shall negotiate with single sellers to obtain the best possible contract terms for the City.

B . Telecommunications 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:

1. 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.
2. 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.
3. 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.

C. Developer Provision of Public Improvements

At times, private developers provide public improvements for the City as required by a condition of 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.

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 or an exemption the use of which is authorized by these rules, 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. Amendments made pursuant to Section A of this rule are not included in computing the aggregate amount under this section.

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, physical or mental handicap, or being a disabled American veteran, 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 \$150,000 or less to contracting entities owned or controlled by persons described in Subsection A of this section.

10.085 Purchase Off Contract 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 USC 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 Non-Profit Agencies

The City may enter into contracts with qualified non-profit agencies 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. Construction Manager/General Contractor

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:

i. Early procurement of materials and supplies;

ii. Early release of bid packages for such things as site development; and

iii. 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.

e. 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. 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. If a design-build contractor is not an Oregon licensed design professional, the design-build contractor shall disclose in its proposal that it is not an Oregon licensed design professional and identify the Oregon licensed design professional(s) who will provide design services.

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 and Class Exemptions

A. The City may exempt a particular contract or a class of contracts from formal competitive process requirements which are not otherwise exempted under these rules. The City shall prepare an application for an exemption containing the following information:

1. The nature of the project or class of contracts:
2. Estimated cost of the project, if applicable;
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, if applicable.

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

C. If the project is a public improvement, the Board shall hold a public hearing and adopt findings justifying the exemption. The findings shall at a minimum address or include the following findings:

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

2. The awarding of public improvement contracts under the exemption will likely result in substantial cost savings to the City as required by ORS 279C.335.

D. Notification of the public hearing shall be published in a newspaper of general circulation in the City and one trade newspaper of general statewide publication a minimum of 14 days prior to the hearing. 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.

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

F. 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.

G. If the project is a procurement of something other than a public improvement,

the Board may approve a special procurement or a class of special procurements if the Board finds that a written request submitted under Section A, above, demonstrates that the use of a special procurement as described in the request, or an alternative procedure prescribed by the Board meets the following criteria:

1. The approval is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and
 2. Is reasonably expected to result in substantial cost savings to the contracting agency or to the public; or
 3. Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements of these rules.
- H. Public notice of the approval of a special procurement or class of special procurements for something other than a public improvement shall be published in a newspaper of general circulation in the City a minimum of 7 days prior to entry into any public contract exempted thereby as required by ORS 279B.085(3).

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.

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 or an exemption the use of which is authorized by these rules, and
- 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 \$150,000, such notice and invitation may be informal.

4. If the amount of the purchase exceeds \$150,000, 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 \$150,000, 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 Department of Administrative Services of the State of Oregon.

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 EMERGING SMALL BUSINESSES

25.010 Emerging Small Businesses

The City shall pursue a policy of providing opportunities for available contracts to emerging small business and shall cooperate with the 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 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 publication 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. "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 show drawings, and any contract amendments, including approved change orders.

- I. "Contract Price" means the total of the awarded bid or proposal amount, including any approved alternates and any fully executed change orders or amendments.
- J. "Contract Release Order" means the document authorizing an additional purchase on an existing requirement contract.
- K. "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.
- L. "Descriptive Literature" means materials submitted by prospective vendors to provide information concerning the products available in response to the bid.
- M. "Facsimile" or "fax" means the electronic equipment that communicates and reproduces both printed and handwritten material. If used in conjunction with a reference to a document; i.e., facsimile bid, the term refers to a document (in the example given, a bid) that has been transmitted to and received by the City via facsimile.
- N. "Lowest Responsible Bidder" means the lowest bidder who has substantially complied with all prescribed public bidding procedures and requirements and has met the standards of responsibility set forth in ORS 279B.110 or 279C.375, has not been debarred or disqualified by the City under ORS 279B.130 or 279C.440; and, if the advertised contract is a public improvement contract, is not on the list created by the Construction Contractors Board under ORS 701.227.
- 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.

30.015 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 calculated 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. Writing specifications and procurement documents in a simple and easy to read format;

2. Searching for new sources of supply;

3. Attempting to make solicitation documents simple and inviting;
4. Everyday courtesy shown to prospective suppliers and contractors; and
5. 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 as required by ORS 701.021 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.

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;
- I. That a contractor must be licensed for asbestos abatement under ORS 468A.710, if applicable;
- J. 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, as required by ORS Chapter 701.021 or licensed by the State Landscape Contractors Board, as required by ORS 671.530;
- 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 pay the higher of the applicable state or federal prevailing rate of wage to all workers on the public works, in compliance with ORS 279C.838, ORS 279C.840 or 40 USC 3141, et seq.; 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 "ORPIN" 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 may 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 \$125,000, 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 or the Davis-Bacon Act (40 USC 3141, et seq.), or both, 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 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) for projects other than public improvements and ORS 279C.430 for public improvements. City may have a separate pre-qualification process.

If a bidder is currently pre-qualified by either the State Department of Transportation or the State Department of Administrative Services to perform contracts, 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 \$100,000 or \$50,000 in the case of transportation projects. 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.

C. Contracts Under \$100,000.

Bid security for contracts of less than \$100,000 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 72 hours before the submittal deadline. If necessary, the City may notify prospective bidders or proposers by telegram, 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 (or Proposal) Modification
Bid Number 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 stamp used.

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

Bid (or Proposal) Withdrawal
Bid (or Proposal) Number 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, and 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. See also PCR 30.135 regarding protests.

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:
 - i. It is clear from the bid that the bidder received the addendum and intended to be bound by its terms; or
 - ii. 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 the list provided for by the Oregon Department of Administrative Services pursuant to ORS 279A.120 for preference provided for by this section. The list is found on the Oregon State website at oregon.gov/DAS/SSD/SPO/reciprocal.shtml.

4. In addition to the above stated preferences, the City may give preference to procuring goods that are fabricated or processed, or services that are performed, entirely within this state if the goods or services cost not more than 10 percent more than goods that are not fabricated or processed, or services that are not performed, entirely within this state. If more than one bidder or proposer qualifies for the preference described in this subsection, the City may give an additional 5% preference to a qualifying bidder or proposer that resides in or is headquartered in this state. However, this section does not apply to emergency work, minor alterations, ordinary repairs or maintenance work for public improvements or to other construction contracts described in ORS 279C.320.

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 also take into account any preferences provided by these rules in determining the lowest bid.

F. 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.

G. 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, starting 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

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.

H. No Assignment or Transfer of Contract Rights

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 200.005(6) and 200.045(3);

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 Contractors Board concerning the responsibility of any entity to whom a public improvement contract is proposed to be awarded. 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. 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 279C.860;
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 or contracts 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; or

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.

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

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.

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.

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 any 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 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., all lower bidders or better proposers are ineligible for award because they are non-responsive or non-responsible and the written protest must so claim. 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.

30.140 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 Milwaukie 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 or Proposal Number 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 reform 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 DBE/MBE/WBE/ESB goal, when the enterprise does not perform a commercially useful function, as defined 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 provided under ORS 279B.425. Any appeal must be filed with the City of Milwaukie 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 Board and the hearing shall be held and the decision issued within 30 days of receipt of the protest. The 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 of Invitations to Bid or Requests for Proposals

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 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 the amount of the contract exceeds \$10,000 and the contract was awarded to a "nonresident bidder", the contractor shall promptly report to the Oregon Department of Revenue on forms to be provided by the Department of Revenue the total contract price, terms of payment, length of contract and such other information as the Department of Revenue may require before final payment can be received on the contract. A copy of the report shall be forwarded to the City. The City shall satisfy itself that the above requirements have been complied with before it issues final payment on the contract. For the purposes of this rule, a foreign contractor is one who is not domiciled in or registered to do business in the State of Oregon.

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 bond required to be filed with the Construction Contractor's Board or BOLI); and
11. 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 a “contractor” as defined in ORS 701.005(5) , 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 defined in ORS 701.005(5) 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 responsible 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.

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 award. Tabulations of awarded bids may be obtained for a nominal charge in person or by submitting to the City a written request stating the bid number and a self-addressed, stamped envelope.

C. Availability of Files.

Completed files, other than confidential materials, shall be available for public review at the City.

D. Copies from Files.

Copies of material from files, other than previously described tabulation sheets, may be obtained upon payment of a reasonable copying charge.

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

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, 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.
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.
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 Laws, unless exempted pursuant to ORS 279C.836(4), (7), (8) or (9).

Public improvement contracts of \$100,000 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. 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. 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.

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.

F. Claims on Payments Bonds

Claims on payment bonds shall comply with ORS 279C.600 to 279C.610 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 subcontractor 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, 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 four 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 2 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 day and time 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.

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.

F. 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. Or 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; and

f. 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.

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

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

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.

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 below in subsections (a) through (f). 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.

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. 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.

3. Expense of Completion.

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

4. Substitution of Contractor.

As provided in PCR 30.205E, termination of the contractor and substitution of another contractor to complete the work does not constitute the award of a new public contract.

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.

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. 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% (twenty-five percent) 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.

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.

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.

All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

C. Interest.

Beginning 30 days after the date of final acceptance of the project by the City, the City shall pay to the contractor interest at the rate established by State statute on any money due and payable to the contractor. Interest shall also be payable on any interim payments that are more than 30 days overdue. No interest shall be assessed against retainage or other amount lawfully withheld by the City.

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 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.

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 prevailing wage laws (ORS 279C.800 to 279C.870 or the Davis-Bacon Act, 40 US 3141, et seq.) 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 \$100,000

The City may, in its discretion, waive the bid security and performance

bond requirements if the amount of the contract is less than \$100,000.

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 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 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 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, 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. **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 rule 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, photogrammetrist, physician or dentist, registered professional engineer, appraiser or surveyor, aerial photographer, timber cruiser, transportation planner, 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 services of a specialized creative and research oriented, noncommercial nature.

5. 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, key punch, 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 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 where the estimated value of the personal services contract will exceed \$250,000. These selections procedures do not apply to personal services contracts for other professionals, 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.

"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."

"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).

"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).

"Photogrammetrist" has the meaning given that term in ORS 672.002.

“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.

“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.

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 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. 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 City Manager or designee will hold discussions with the finalists selected for initial screening. Applicant capability, experience, and qualifications shall determine the department's final selection. The interviews may be in person or by phone.

b. Recommendation.

The City Manager 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.

c. Consultant Selection.

After the Board has selected the most qualified consultant, compensation requirements shall be requested from such consultant. The Board may enter into negotiations with the selected 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. 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.

d. Execution of Contract.

If an agreement is reached with the selected Consultant, such Consultant will be asked to enter into a contract for the services. If an agreement cannot be reached, the City may enter into negotiations with the next most qualified consultant until such time as an agreement is achieved and a contract is executed.

C. Procedure when Estimated Value of the Contract Exceeds \$100,000 but does not Exceed \$250,000.

1. This procedure may be used when the estimated value of the personal services contract exceeds \$100,000 but does not exceed \$250,000.

2. The application procedures specified above in subsections B. 1-4 shall be observed with the exception that the consultant selection as described in subsection 4.(c) may include consideration of scope, schedule or objectives for the particular project.

D. Direct Appointment Procedure.

1. A qualified consultant may be appointed directly when the estimated value of the contract does not exceed \$100,000.

E. 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.

F. 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. Determine appropriate selection/appointment procedure.
- e. Select consultant/candidates as specified under this rule.
- f. Interview the top candidates and make the final selection.
- g. Execute contracts and awards to consultants, with the City Manager's prior approval.
- h. Maintain a file on the selection process, including:
 - i. The method and copy of the announcement.
 - ii. The names of firms/individuals and cost estimates considered.
 - iii. A justification of need for the contract.
 - iv. The basis for selection.
 - v. The means by which rates were established.

- vi. How reasonableness of price was determined.
 - vii. 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.

70.017 Screening and Selection Policy for Contracts for Personal Services other than Architects, Engineers, Land Surveyors, Photogrammetrists, Transportation Planners and Related Services

A. Formal Selection Procedure.

This procedure shall be used for personal service contracts other than architects, engineers, land surveyors, photogrammetrists, transportation planners and related services, when the total cost of the contract exceeds \$150,000. 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 will 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 \$150,000.

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 \$50,000; 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 \$150,000.

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. 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. Determine appropriate selection/appointment procedure.
 - e. Select consultant/candidates as specified under this rule.
 - f. Interview the top candidates and make the final selection.
 - g. Execute contracts and awards to consultants, with the City Manager's prior approval.
 - h. Maintain a file on the selection process, including:
 - i. The method and copy of the announcement.
 - ii. The names of firms/individuals and cost estimates considered.
 - iii. A justification of need for the contract.
 - iv. The basis for selection.
 - v. The means by which rates were established.
 - vi. How reasonableness of price was determined.
 - vii. 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. 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 \$150,000 are not permitted. If a contract was originally awarded by the direct appointment procedure, amendments that would result in a total contract price of more than \$50,000 are not permitted.

PCR 80.000 EMERGENCY CONTRACTS; SPECIFIC EXEMPTION REQUIREMENTS; BOARD EXCEPTION; PROCEDURES; TEMPORARY EXEMPTIONS

80.010 Emergency Contracts

A. Regardless of the estimated value of the public contract, 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 first declare the existence of an emergency, which shall authorize the City to enter into emergency contracts after making detailed written findings describing the emergency conditions necessitating prompt execution of the contract(s). A copy of the findings together with the amount of the contract(s) and the name of the contractor(s) 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 (1) 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 this 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 PURCHASING GUIDELINES

90.010 Recycled Materials and Products Guidelines

The City shall make every 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.

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.

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, overprinting 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 Retread Tires.

In the specification and purchase of tires for vehicles and equipment in the City fleet:

1. The City shall make every reasonable effort to utilize retread tires in the place of tires manufactured from virgin materials where technical requirements will allow; and
2. The City shall give preference to the purchase of retread tires to the maximum extent possible within the intended use of the product taking the following into consideration:
 - a. The product is unable to meet the City's specifications (e.g., emergency response vehicles and heavy equipment);
 - b. The product is not available within specified delivery schedules; and
 - c. The product is not price competitive.

D. 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.

E. 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.

F. 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

2. City employees in all departments shall use washable beverage cups and other food services ware in the place of disposable items wherever possible. Disposable cups and utensils shall be utilized primarily for meetings and department guests.

G. 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.

EXHIBIT B

FINDINGS IN SUPPORT OF EXEMPTIONS TO COMPETITIVE BIDDING OR PROPOSALS

The Local Contract Review Board of the City of Milwaukie 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 exemptions implement 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.

Contract Amendments

9. 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.

10. 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.

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

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

Personal Services Contracts for Architects, Engineers, Land Surveyors, Photogrammetrists, Transportation Planners and Related Services

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

Emergencies

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

15. 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.

16. 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.

CONCLUSION

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

17. 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.

18. 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.

19. 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.

20. 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.

ATTACHMENT 5

EXHIBIT A

CITY OF MILWAUKIE

LOCAL CONTRACT REVIEW BOARD RULES

The following Public Contracting Rules (PCR) have been adopted by the City Council acting as the Local Contract Review Board pursuant to the authority granted to the Board by Municipal Code Section 3.05. The rules apply to all contracting, purchasing, and disposing of personal property by the City of Milwaukee but do not apply to acquisition, sale or other transfer of real property.

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CITY OF MILWAUKIE LOCAL CONTRACT REVIEW BOARD

PUBLIC CONTRACTING RULES

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 and 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. 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 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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B. As used in this Section:

1. "Board" means the City of Milwaukie Local Contract Review Board.
2. "City" or "The City" means Milwaukie, 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. "Personal property" means everything subject to ownership which is not real property and has exchangeable value.
7. "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.
8. "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.
9. "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.

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

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

12. "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 With an Estimated Value 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 estimated value of the contract does not exceed \$~~150,000~~50,000. 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 estimated value of the contract does not exceed \$~~100,000~~50,000. 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 estimated value amount of the contract does not exceed \$5,000, 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 ~~estimated value~~ amount of the contract does not exceed \$150,000, ~~or \$100,000 for a public improvement contract or \$50,000 for a transportation public improvement contract,~~ 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 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. However, each order of library materials for the City library shall be considered a separate contract and may be made by using the small contract or intermediate contract procedures if within the dollar amounts for those procedures.

F. Amendment of Small and Intermediate Contracts

A contract awarded under the small or intermediate contract procedures may not be amended if the amendment would result in a total contract price that exceeds 25% of the value of the initial contract ~~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.

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 \$150,000 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 \$150,000 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 Single Seller of Product or Service

A. General

The City may purchase without a formal competitive process if there is only one 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 or acting, interim or temporary City Manager. To the extent reasonably practical, the City shall negotiate with single sellers to obtain the best possible contract terms for the City.

B. Telecommunications 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:

1. 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.
2. 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.
3. The extent to which alternative providers can respond to the ~~City's~~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.

C. Developer Provision of Public Improvements

At times, private developers provide public improvements for the City as required by a condition of 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.

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 or an exemption the use of which is authorized by these rules, 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. Amendments made pursuant to Section A of this rule are not included in computing the aggregate amount under this section.

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, or being a disabled American veteran, 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 \$150,000~~50,000~~ or less to contracting entities owned or controlled by persons described in Subsection A of this section.

10.085 Purchase Off Contract 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 USC 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 Non-Profit Agencies

The City may enter into contracts with qualified non-profit agencies 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. Construction Manager/General Contractor

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:

- i. Early procurement of materials and supplies;
- ii. Early release of bid packages for such things as site development; and
- iii. 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.

e. 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. 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. If a design-build contractor is not an Oregon licensed design professional, the design-build contractor shall disclose in its proposal that it is not an Oregon licensed design professional and identify the Oregon licensed design professional(s) who will provide design services.

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 and Class Exemptions

A. The City may exempt a particular contract or a class of contracts from formal competitive process requirements which are not otherwise exempted under these rules. The City shall prepare an application for an ~~individual~~ exemption containing the following information:

1. The nature of the project or class of contracts;
2. Estimated cost of the project, if applicable;
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, if applicable.

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

C. If the project is a public improvement, ~~the~~ Board shall hold a public hearing and adopt findings justifying the ~~individual~~ exemption. The findings shall at a minimum address or include the following findings:

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

2. The awarding of public improvement contracts under the exemption will likely result in substantial cost savings to the City as ~~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 and one trade newspaper of general statewide publication 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.D.~~ 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.E. At the public hearing, the City shall offer an opportunity for any interested party to appear and present comment.

F. 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.

G. If the project is a procurement of something other than a public improvement, the Board may approve a special procurement or a class of special procurements if the Board finds that a written request submitted under Section A, above, demonstrates that the use of a special procurement as described in the request, or an alternative procedure prescribed by the Board meets the following criteria:

1. The approval is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and

2. Is reasonably expected to result in substantial cost savings to the contracting agency or to the public; or

3. Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements of these rules.

H. Public notice of the approval of a special procurement or class of special procurements for something other than a public improvement shall be published in a newspaper of general circulation in the City a minimum of 7 days prior to entry into any public contract exempted thereby as required by ORS 279B.085(3).

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.

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 or an exemption the use of which is authorized by these rules, and-
- 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 \$~~25~~150,000, such notice and invitation may be informal.
 4. If the amount of the purchase exceeds \$~~150~~25,000, 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 \$~~150~~25,000, 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 Department of ~~Administrative~~ ~~General~~ Services of the State of Oregon.

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 EMERGING SMALL BUSINESSES

25.010 Emerging Small Businesses

The City shall pursue a policy of providing opportunities for available contracts to emerging small business and shall cooperate with the 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 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 publication 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. "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 show drawings, and any contract amendments, including approved change orders.

- I. "Contract Price" means the total of the awarded bid or proposal amount, including any approved alternates and any fully executed change orders or amendments.
- J. "Contract Release Order" means the document authorizing an additional purchase on an existing requirement contract.
- K. "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.
- L. "Descriptive Literature" means materials submitted by prospective vendors to provide information concerning the products available in response to the bid.
- M. "Facsimile" or "fax" means the electronic equipment that communicates and reproduces both printed and handwritten material. If used in conjunction with a reference to a document; i.e., facsimile bid, the term refers to a document (in the example given, a bid) that has been transmitted to and received by the City via facsimile.
- N. "Lowest Responsible Bidder" means the lowest bidder who has substantially complied with all prescribed public bidding procedures and requirements and has met the standards of responsibility set forth in ORS 279B.110 or 279C.375, has not been debarred or disqualified by the City under ORS 279B.130 or 279C.440; and, if the advertised contract is a public improvement contract, is not on the list created by the Construction Contractors Board under ORS 701.227.
- 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.

30.01510 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 calculated 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. Writing specifications and procurement documents in a simple and easy to read format;

2. Searching for new sources of supply;

3. Attempting to make solicitation documents simple and inviting;
 4. Everyday courtesy shown to prospective suppliers and contractors; and
 5. 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 as required by ORS 701.021 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.

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;
- I. That a contractor must be licensed for asbestos abatement under ORS 468A.710, if applicable;
- J. 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, as required by ORS Chapter 701.021 or licensed by the State Landscape Contractors Board, as required by ORS 671.530;
- 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 pay the higher of the applicable state or federal prevailing rate of wage to all workers on the public works, in compliance with ORS 279C.838, ORS 279C.840 or 40 USC 3141, et seq.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" ORPIN,~~ 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 may 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 \$125,000, 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 or the Davis-Bacon Act (40 USC 3141, et seq.276a), or both, 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 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) for projects other than public improvements and ORS 279C.430 for public improvements. City may have a separate pre-qualification process.

If a bidder is currently pre-qualified by either the State Department of Transportation or the State Department of Administrative Services to perform contracts, 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 \$100,000 or \$50,000 in the case of transportation projects. 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.

C. Contracts Under \$100,000.

Bid security for contracts of less than ~~nt~~ \$100,000 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 72 hours before the submittal deadline. If necessary, the City may notify prospective bidders or proposers by telegram, 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 (or Proposal) Modification
Bid Number 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 stamp used.

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

Bid (or Proposal) Withdrawal
Bid (or Proposal) Number 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, and 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. [See also PCR 30.135 regarding protests.](#)

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:
 - i. It is clear from the bid that the bidder received the addendum and intended to be bound by its terms; or
 - ii. 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 [thea](#) list provided for by the Oregon Department of Administrative Services pursuant to ORS 279A.120-029(3) for preference provided for by this section. [The list is found on the Oregon State website at oregon.gov/DAS/SSD/SPO/reciprocal.shtml.](http://oregon.gov/DAS/SSD/SPO/reciprocal.shtml)

4. In addition to the above stated preferences, the City may give preference to procuring goods that are fabricated or processed, or services that are performed, entirely within this state if the goods or services cost not more than 10 percent more than goods that are not fabricated or processed, or services that are not performed, entirely within this state. If more than one bidder or proposer qualifies for the preference described in this subsection, the City may give an additional 5% preference to a qualifying bidder or proposer that resides in or is headquartered in this state. However, this section does not apply to emergency work, minor alterations, ordinary repairs or maintenance work for public improvements or to other construction contracts described in ORS 279C.320.

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 also take into account any preferences provided by these rules in determining the lowest bid.

F. 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.

G. 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, starting 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

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.

H. No Assignment or Transfer of Contract Rights

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 200.005(6(11)) and 200.045(3);

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 Contractors Board concerning the responsibility of any ~~entity to person we~~ whom a public improvement contract is proposed to be awarded, ~~and shall comply with the reporting requirements of ORS 279.375~~. 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. 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~~279C.860;

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

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.

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.

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 ~~any~~ 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 and the written protest must so claim. 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.

30.140 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 Milwaukie 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 or Proposal Number 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 reform 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 DBE/MBE/WBE/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 Milwaukie 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 Board and the hearing shall be held and the decision issued within 30 days of receipt of the protest. The 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 of Invitations to Bid or Requests for Proposals

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 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 the amount of the contract exceeds \$10,000 and the contract was awarded to a "nonresident bidder", the contractor shall promptly report to the Oregon Department of Revenue on forms to be provided by the Department of Revenue the total contract price, terms of payment, length of contract and such other information as the Department of Revenue may require before final payment can be received on the contract. A copy of the report shall be forwarded to the City. The City shall satisfy itself that the above requirements have been complied with before it issues final payment on the contract. For the purposes of this rule, a foreign contractor is one who is not domiciled in or registered to do business in the State of Oregon.

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 bond required to be filed with the Construction Contractor's Board or BOLI); and
11. ~~_____~~ 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 a “contractor” as defined described in ORS 701.005(52) (~~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 defined ~~described~~ in ORS 701.005(52) 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 responsible 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.

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 award. Tabulations of awarded bids may be obtained for a nominal charge in person or by submitting to the City a written request stating the bid number and a self-addressed, stamped envelope.

C. Availability of Files.

Completed files, other than confidential materials, shall be available for public review at the City.

D. Copies from Files.

Copies of material from files, other than previously described tabulation sheets, may be obtained upon payment of a reasonable copying charge.

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

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, 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.

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

~~6.~~

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.

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 Laws, unless exempted pursuant to ORS 279C.836(4), (7), (8) or (9).

Public improvement contracts of \$100,000 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. 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. 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.

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.

F. Claims on Payments Bonds

Claims on payment bonds shall comply with ORS 279C.600 to 279C.610~~25~~ 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 subcontractor 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, 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 four 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 2 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 ~~four~~two hours of the submittal deadline shall be considered non-responsive.

C. The closing day and time 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.

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.

F. 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. Or 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; and

f. 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.

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

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

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.

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

~~Below in subsections (a) through (f) 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.

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. 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.

3. Expense of Completion.

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

4. Substitution of Contractor.

As provided in PCR 30.205E, 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 279.005 to 279.111.~~

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.

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.~~ 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% (twenty-five percent) 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.

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.

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.

All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

C. Interest.

Beginning 30 days after the date of final acceptance of the project by the City, the City shall pay to the contractor interest at the rate established by State statute on any money due and payable to the contractor. Interest shall also be payable on any interim payments that are more than 30 days overdue. No interest shall be assessed against retainage or other amount lawfully withheld by the City.

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 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.

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 prevailing wage laws (ORS 279C.800 to 279C.870 or the Davis-Bacon Act, 40 US [3141, et seq.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 \$100,000

The City may, in its discretion, waive the bid security and performance bond requirements if the amount of the contract is less than \$100,000.

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 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 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 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, 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. **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 rule 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 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; **photogrammetrist**; physician or dentist; registered professional engineer; appraiser or surveyor; aerial photographer; timber cruiser; **transportation planner**; 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 services of a specialized creative and research oriented, noncommercial nature.

5. 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, key punch, 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 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 where the estimated value of the personal services contract will exceed \$250,000. These selections procedures do not apply to personal services contracts for other professionals, 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.

"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."

“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).

“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).

“Photogrammetrist” has the meaning given that term in ORS 672.002.

“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.

“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.

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 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. 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 City Manager or designee will hold discussions with the finalists selected for initial screening. Applicant capability, experience, and qualifications shall determine the department's final selection. The interviews may be in person or by phone.

b. Recommendation.

The City Manager 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.

c. Consultant Selection.

After the Board has selected the most qualified consultant, compensation requirements shall be requested from such consultant. The Board may enter into negotiations with the selected 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. 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.

d. Execution of Contract.

If an agreement is reached with the selected Consultant, such Consultant will be asked to enter into a contract for the services. If an agreement cannot be reached, the City may enter into negotiations with the next most qualified consultant until such time as an agreement is achieved and a contract is executed.

C.Procedure when Estimated Value of the Contract Exceeds \$100,000 but does not Exceed \$250,000.

1. This procedure may be used when the estimated value of the personal services contract exceeds \$100,000 but does not exceed \$250,000.

2. The application procedures specified above in subsections B. 1-4 shall be

observed with the exception that the consultant selection as described in subsection 4.(c) may include consideration of scope, schedule or objectives for the particular project.

D. Direct Appointment Procedure.

1. A qualified consultant may be appointed directly when the estimated value of the contract does not exceed \$100,000.

E. 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.

F. 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. Determine appropriate selection/appointment procedure.
- e. Select consultant/candidates as specified under this rule.
- f. Interview the top candidates and make the final selection.
- g. Execute contracts and awards to consultants, with the City Manager's prior approval.
- h. Maintain a file on the selection process, including:

- i. The method and copy of the announcement.
- ii. The names of firms/individuals and cost estimates considered.
- iii. A justification of need for the contract.
- iv. The basis for selection.
- v. The means by which rates were established.
- vi. How reasonableness of price was determined.
- vii. 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.

70.017 Screening and Selection Policy for Contracts for Personal Services other than Architects, Engineers, Land Surveyors, Photogrammetrists, Transportation Planners and Related Services

A. Formal Selection Procedure.

This procedure shall be used for personal service contracts other than Architects, Engineers, Land Surveyors, Photogrammetrists, Transportation Planners and Related Services, when the total cost of the contract exceeds \$150,000. 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 will 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 \$150,000.

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 \$540,000; 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 \$150,000.

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. 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. Determine appropriate selection/appointment procedure.
 - e. Select consultant/candidates as specified under this rule.
 - f. Interview the top candidates and make the final selection.
 - g. Execute contracts and awards to consultants, with the City Manager's prior approval.
 - h. Maintain a file on the selection process, including:
 - i. The method and copy of the announcement.
 - ii. The names of firms/individuals and cost estimates considered.
 - iii. A justification of need for the contract.
 - iv. The basis for selection.
 - v. The means by which rates were established.
 - vi. How reasonableness of price was determined.
 - vii. 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. 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 \$150,000 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 \$540,000 are not permitted.

PCR 80.000 EMERGENCY CONTRACTS; SPECIFIC EXEMPTION REQUIREMENTS; BOARD EXCEPTION; PROCEDURES; TEMPORARY EXEMPTIONS

80.010 Emergency Contracts

A. ~~Regardless of the estimated value of the public contract, t~~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 first declare the existence of an emergency, which shall authorize the City to enter into ~~an~~ emergency contract ~~s with a price under \$50,000 a~~fter ~~m~~aking detailed written findings describing the emergency conditions necessitating prompt execution of the contract (s). A copy of the findings together with the amount of the contract (s) and the name of the contractor (s) 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 (1a) 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 this ise 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 PURCHASING GUIDELINES

90.010 Recycled Materials and Products Guidelines

The City shall make every 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.

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.

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, overprinting 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 Retread Tires.

In the specification and purchase of tires for vehicles and equipment in the City fleet:

1. The City shall make every reasonable effort to utilize retread tires in the place of tires manufactured from virgin materials where technical requirements will allow; and

2. The City shall give preference to the purchase of retread tires to the maximum extent possible within the intended use of the product taking the following into consideration:

a. The product is unable to meet the City's specifications (e.g., emergency response vehicles and heavy equipment);

b. The product is not available within specified delivery schedules; and

c. The product is not price competitive.

D. 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.

E. 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.

F. 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

2. City employees in all departments shall use washable beverage cups and other food services ware in the place of disposable items wherever possible. Disposable cups and utensils shall be utilized primarily for meetings and department guests.

G. 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.

EXHIBIT B

FINDINGS IN SUPPORT OF EXEMPTIONS TO COMPETITIVE BIDDING OR PROPOSALS

The Local Contract Review Board of the City of Milwaukie 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~~s~~ 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.

Contract Amendments

9. 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.

10. 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.

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

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

Personal Services Contracts for Architects, Engineers, Land Surveyors, Photogrammetrists, Transportation Planners and Related Services

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

Emergencies

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

15. 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.

16. 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.

CONCLUSION

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

17. 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.

18. 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.

19. 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.

20. 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.