ORDINANCE NO.

IN THE MATTER OF AN ORDINANCE ESTABLISHING PUBLIC CONTRACTING REGULATIONS FOR THE CITY OF CONDON AND DECLARING AN EMERGENCY

WHEREAS, of the City of Condon Municipal Code provides:

- Rules.

From time to time the city council, acting as the contract review board may, by resolution of the board, adopt rules for the exercise of its authority as the contract review board. Such rules may govern the meetings of the contract review board, qualifications of proposals and bids, disqualification of proposals and bids, appealing disqualifications of proposals and bids and exempting contracts from bidding requirements, for all contracts acquiring public improvements, goods and services and personal services compatible with the requirements of ORS Chapter 279.

WHEREAS, the City desires to adopt rules for the exercise of its authority as the contract review board for the City of Condon.

THE CITY OF CONDON ORDAINS AS FOLLOWS:

1. Public Contracts – City of Condon Policy.

   A. **Short Title.** The provisions of this ordinance and all rules adopted under this ordinance may be cited as City of Condon’s Public Contracting Regulations.

   B. **Purpose of Public Contracting Regulations.** It is the policy of the City of Condon in adopting the Public Contracting Regulations to utilize public contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by:

      (1) Promoting impartial and open competition;

      (2) Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and

      (3) Taking full advantage of evolving procurement methods that suit the contracting needs of City of Condon as they emerge within various industries.

   C. **Interpretation of Public Contracting Rules.** In furtherance of the purpose of the objectives set forth in subsection B, it is the City Council’s intent that
City of Condon Contracting Regulations be interpreted to authorize the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B and 279C.

2. **Application of Public Contracting Regulations.** In accordance with ORS 279A.025, City of Condon’s public contracting regulations and the Oregon Public Contracting Code do not apply to the following classes of contracts.

   A. **Between Governments.** Contracts between the City of Condon and a public body or agency of the State of Oregon or its political subdivisions, or between the City of Condon and an agency of the federal government.

   B. **Grants.** A grant contract is an agreement under which the City of Condon is either a grantee or a grantor of moneys, property or other assistance, including loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, for the purpose of supporting or stimulating a program or activity of the grantee and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions. *The making or receiving of a grant is not a public contract subject to the Oregon Public Contracting Code; however, any grant made by the City of Condon for the purpose of constructing a public improvement or public works project shall impose conditions on the grantee that ensure that expenditures of the grant to design or construct the public improvement or public works project are made in accordance with the Oregon Public Contracting Code and these regulations.*

   C. **Legal Witnesses and Consultants.** Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the City of Condon is or may become interested.

   D. **Real Property.** Acquisitions or disposals of real property or interests in real property.

   E. **Textbooks.** Contracts for the procurement or distribution of textbooks.

   F. **Oregon Corrections Enterprises.** Procurements from an Oregon corrections enterprises program.

   G. **Finance.** Contracts, agreements or other documents entered into, issued or established in connection with:

   (i) The incurring of debt by the City of Condon, including any associated contracts, agreements or other documents, regardless of
whether the obligations that the contracts, agreements or other documents establish are general, special or limited;

(2) The making of program loans and similar extensions or advances of funds, aid or assistance by the City of Condon to a public or private Person for the purpose of carrying out, promoting or sustaining activities or programs authorized by law other than for the construction of public works or public improvements;

(3) The investment of funds by the City of Condon as authorized by law, or

(4) Banking, money management or other predominantly financial transactions of the City of Condon that, by their character, cannot practically be established under the competitive contractor selection procedures, based upon the findings of the City Council.


I. **Exempt Under State Laws.** Any other public contracting specifically exempted from the Oregon Public Contracting Code by another provision of law.

J. **Federal Law.** Except as otherwise expressly provided in ORS 279C.800 to 279C870, applicable federal statues and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of the Oregon Public Contracting Code or these regulations, or require additional conditions in public contracts not authorized by the Oregon Public Contracting Code or these regulations.

3. **Public Contracts – Regulation by the City of Condon.** Except as expressly delegated under these regulations, the City of Condon City Council reserves to itself the exercise of all of the duties and authority of a contract review board and a contracting agency under state law, including, but not limited to, the power and authority to:

A. **Solicitation Methods Applicable to Contracts.** Approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts;

B. **Brand Name Specifications.** Exempt the use of brand name specifications for public improvement contracts;
C. **Waiver of Performance and Payment Bonds.** Approve the partial or complete waiver of the requirement for the delivery of a performance or payment bond for construction of a public improvement;

D. **Electronic Advertisement of Public Improvement Contracts.** Authorize the use of electronic advertisements for contracts in lieu of publication in a newspaper of general circulation;

E. **Appeals.** Hear properly filed appeals of appointed Solicitation Agents’ determination of debarment, or concerning prequalification or contract award;

F. **Rulemaking.** Adopt contracting rules under ORS 279A.065, ORS 279A.070 including, without limitation, rules for the procurement, management, disposal and control of goods, services, personal services and public improvements;

G. **Award.** Award all contracts;

H. **Delegation.** Delegate to any employee or agent of the City of Condon any of the duties or authority of a contracting agency; and

I. **Mandatory Review of Rules.** Whenever the Oregon State Legislative Assembly enacts laws that cause the attorney general to modify its Model Rules, the City of Condon City Council shall review these regulations to determine whether any modifications to the regulations need to be adopted by the City of Condon to ensure compliance with statutory changes.

4. **Public Contracts – Model Rules.** The Model Rules adopted by the Attorney General under ORS 279A.065 (Model Rules) are hereby adopted as the public contracting rules for the City of Condon, to the extent that the Model Rules do not conflict with the provisions of this Ordinance including any amendments to this Ordinance.

5. **Public Contracts – Designation of Solicitation Agents.** The following officials of the City of Condon are designated as the Solicitation Agents for the following classes of contracts unless superseded by a specific designation by the City Council:

   (1) Design and construction of public improvements –

   (2) Personal services contracts, other than for design of public improvements – administrative officer.

   (3) Procurement and disposal of goods and services – administrative officer.
6. **Public Contracts – Definitions.** The following terms used in these regulations shall have the meanings set forth below.

**Award** means the selection of a person to provide goods, services or public improvements under a public contract. The award of a contract is not binding on the City of Condon until the contract is executed and delivered by the City of Condon.

**Bid** means a binding, sealed, written offer to provide goods, services or public improvements for a specified price or prices.

**Concession agreement** means a contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from real property owned or managed by the City of Condon, and under which the concessionaire makes payments to the City of Condon based, at least in part, on the concessionaire’s revenues or sales. The term “concession agreement” does not include a mere rental agreement, license or lease for the use of premises.

**Contract price** means the total amount paid or to be paid under a contract, including any approved alternates, and any fully executed change orders or amendments.

**Contract review board or local contract review board** means the City of Condon City Council.

**Cooperative procurement** means a procurement conducted by or on behalf of one or more contracting agencies.

**Debarment** means a declaration by City of Condon City Council under ORS 279B.130 or ORS 279C.440 that prohibits a potential contractor from competing for City of Condon’s public contracts for a prescribed period of time.

**Disposal** means any arrangement for the transfer of property by City of Condon under which City of Condon relinquishes ownership.

**Emergency** means circumstances that create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and require prompt execution of a contract to remedy the condition.

**Energy savings performance contract** means a contract with a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures that guarantee energy savings or performance.

**Findings** are the statements of fact that provide justification for a determination. Findings may include, but are not limited to, information regarding operation, budget and financial data; public benefits; cost savings; competition in public contracts; quality
and aesthetic considerations, value engineering; specialized expertise needed; public safety; market conditions; technical complexity; availability, performance and funding sources.

**Goods** means any item or combination of supplies, equipment, materials or other personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto.

**Informal solicitation** means a solicitation made in accordance with City of Condon’s Public Contracting Regulations to a limited number of potential contractors, in which the Solicitation Agent attempts to obtain at least three written quotes or proposals.

**Invitation to bid** means a publicly advertised request for competitive sealed bids.

**Model Rules** means the public contracting rules adopted by the Attorney General under ORS 279A.065.

**Offeror** means a person who submits a bid, quote or proposal to enter into a public contract with the City of Condon.

**Oregon Public Contracting Code** means ORS chapters 279A, 279B and 279C.

**Person** means a natural or any other private or governmental entity, having the legal capacity to enter into a binding contract.

**Proposal** means a binding offer to provide goods, services or public improvements with the understanding that acceptance will depend on the evaluation of factors other than, or in addition to, price. A Proposal may be made in response to a request for proposals or under an informal solicitation.

**Personal services contract** means a contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of architects, engineers, land surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. The City of Condon City Council shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.

**Public contract** means a sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of Condon of personal property, services, including
personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.

**Public improvement** means a project for construction, reconstruction or major renovation on real property by or for the City of Condon. “Public improvement” does not include:

1. Projects for which no funds of the City of Condon are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

2. Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

**Qualified pool** means a pool of vendors who are pre-qualified to compete for the award of contracts for certain types of contracts or to provide certain types of services.

**Quote** means a price offer made in response to an informal or qualified pool solicitation to provide goods, services or public improvements.

**Request for proposals** means a publicly advertised request for sealed competitive proposals.

**Services** means and includes all types of services (including construction labor) other than personal services.

**Solicitation** means an invitation to one or more potential contractors to submit a bid, proposal, quote, statement of qualifications or letter of interest to the City of Condon with respect to a proposed project, procurement or other contracting opportunity. The word “solicitation” also refers to the process by which the City of Condon requests, receives and evaluates potential contractors and awards public contracts.

**Solicitation Agent** means with respect to a particular solicitation or contract, the City of Condon employee charged with responsibility for conducting the solicitation and making an award, or making a recommendation on award to the City of Condon City Council.

**Solicitation documents** means all informational materials issued by the City of Condon for solicitation, including, but not limited to advertisements, instructions, submission requirements and schedules, award criteria, contract terms and specifications, and all laws, regulations and documents incorporated by reference.

**Standards of responsibility** means the qualifications of eligibility for award of a public contract. An offeror meets the standards of responsibility if the offeror has:
(1) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the offeror to meet all contractual responsibilities;

(2) A satisfactory record of performance. The Solicitation Agent shall document the record of performance of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;

(3) A satisfactory record of integrity. The contracting agency in evaluating the bidder’s record of integrity may consider, among other things, whether the bidder has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the bidder’s performance of a contract or subcontract. The contracting agency shall document the bidder’s record of integrity if the contracting agency finds under this subparagraph that the bidder is not responsible under this paragraph;

(4) Qualified legally to contract with the City of Condon;

(5) Supplied all necessary information in connection with the inquiry concerning responsibility. If an offeror fails to promptly supply information requested by the Solicitation Agent concerning responsibility, the Solicitation Agent shall base the determination of responsibility upon any available information or may find the offeror non-responsible; and

(6) Not been debarred by the City of Condon, and, in the case of public improvement contracts, has not been listed by the Construction Contractors Board as a contractor who is not qualified to hold a public improvement contract.

**Surplus property** means personal property owned by the City of Condon which is no longer needed for use by the department to which such property has been assigned.

7. Public Contracts – Process for Approval of Special Solicitation Methods and Exemptions.

A. **Authority of Board of Councilors.** In its capacity as contract review board for the City of Condon, the City of Condon City Council, upon its own initiative, may create special selection, evaluation and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts as provided in this section 7.
B. **Basis for Approval.** The approval of a special solicitation method or exemption from competition must be based upon a record before the City of Condon City Council that contains the following:

1. The nature of the contract or class of contracts for which the special solicitation or exemption is requested;

2. The estimated contract price or cost of the project, if relevant;

3. Findings to support the substantial cost savings, enhancement in quality or performance or other public benefit anticipated by the proposed selection method or exemption from competitive solicitation;

4. Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or class of public contracts, or would otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the solicitation requirements that would otherwise be applicable under these regulations;

5. A description of the proposed alternative contracting methods to be employed; and

6. The estimated date by which it would be necessary to let the contract(s).

In making a determination regarding a special selection method, the City of Condon City Council may consider the type, cost, amount of the contract or class of contracts, number of persons available to make offers, and such other factors as it may deem appropriate.

C. **Hearing.**

1. The City of Condon shall approve the special solicitation or exemption after a public hearing before the City of Condon City Council following notice by publication in at least one newspaper of general circulation in the City of Condon area.

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

3. The City of Condon City Council will consider the findings and may approve the exemption as proposed or as modified by the City of
Condon City Council after providing an opportunity for public comment.

D. **Special Requirements for Public Improvement Contracts.**

(1) Notification of the public hearing for exemption of a public improvement contract, or class of public improvement contracts, shall be published in a trade newspaper of general statewide circulation at least 14 days prior to the hearing.

(2) The notice shall state that the public hearing is for the purpose of taking comments on City of Condon’s draft findings for an exemption from the standard solicitation method. At the time of the notice, copies of the draft findings shall be made available to the public.

E. **Commencement of Solicitation Prior to Approval.** A solicitation may be issued prior to the approval of a special exemption under this section 7, provided that the closing of the solicitation may not be earlier than five days after the date of the hearing at which the City of Condon City Council approves the exemption. If the City of Condon City Council fails to approve a requested exemption, or requires the use of a solicitation procedure other than the procedures described in the issued solicitation documents, the issued solicitation may either be modified by addendum, or cancelled.

8. **Public Contracts – Solicitation Methods for Classes of Contracts.** The following classes of public contracts and the method(s) that are approved for the award of each of the classes are hereby established by the City of Condon City Council

A. **Purchases from Nonprofit Agencies for Disabled Individuals.** The City of Condon shall give a preference to goods, services and public improvements available from qualified nonprofit agencies for disabled individuals in accordance with the provisions of ORS 279.835 through 279.850.

B. **Public Improvement Contracts.**

(i) **Any Public Improvement.** Unless otherwise provided in these regulations or approved for a special exemption, public improvement contracts in any amount may be issued under an invitation to bid.

(ii) **Non-Transportation Public Improvements Up to $100,000.** Public improvement contracts other than contracts for highway, bridge or other transportation projects for which the estimated contract price
does not exceed $100,000 may be awarded using an informal solicitation for quotes or proposals.

(3) **Transportation Public Improvements Up to $50,000.** Contracts for which the estimated contract price does not exceed $50,000 for highways, bridges or other transportation projects may be awarded using an informal solicitation for quotes.

(4) **City-Funded Privately-Constructed Public Improvements.** City of Condon may contribute funding to a privately-constructed public improvement project without subjecting the project to competitive solicitation requirements if all of the following conditions are met with respect to the entire public improvement project:

(a) City of Condon’s contribution to the project may not exceed 25% of the total cost of the project;

(b) City of Condon must comply with all applicable laws concerning the reporting of the project to the Bureau of Labor and Industries as a public works project;

(c) The general contractor for the project must agree in writing to comply with all applicable laws concerning reporting and payment of prevailing wages for the project;

(d) The funds contributed to the project may not provide a pecuniary benefit to the owner of the development for which the project is being constructed, other than benefits that are shared by all members of the community;

(e) The performance of the general contractor and the payment of labor for the project must be secured by performance and payment bonds or other cash-equivalent security that is acceptable to the City of Condon City Council to protect the City of Condon against defective performance and claims for payment; and

(f) The contract for construction of the project must be amended, as necessary, to require the general contractor to maintain adequate workers compensation and liability insurance and to protect and provide indemnification to the City of Condon for all claims for payment, injury or property damage arising from or related to the construction of the project.
C. **Personal Services Contracts.** Except as otherwise provided in these regulations, personal services contracts may be awarded in the same manner as contracts for services under ORS 279B.050, and 279B.060 to 279B.085.

(i) **Any Personal Services Contract.** Personal services contracts in any amount may be awarded under a publicly advertised request for competitive sealed proposals.

(2) **Personal Service Contracts Not Exceeding $150,000.** Contracts for personal services for which the estimated contract price does not exceed $150,000 may be awarded using an informal solicitation for proposals.

(3) **$75,000 Award from Qualifed Pool.** Contracts for personal services for which the estimated contract price does not exceed $75,000 may be awarded by direct appointment without competition from a Qualified Pool.

(4) **Personal Service Contracts Not Exceeding $20,000 Per Year.** Contracts for which the Solicitation Agent estimates that payments will not exceed $20,000 in any fiscal year or $150,000 over the full term, including optional renewals, may be awarded under any method deemed in City of Condon’s best interest by the Solicitation Agent, including by direct appointment.

(5) **Personal Service Contracts for Continuation of Work.** Contracts of not more than $150,000 for the continuation of work by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract may be awarded without competition if the prior contract was awarded under a competitive process and the Solicitation Agent determines that use of the original contractor will significantly reduce the costs of, or risks associated with, the work.

D. **Hybrid Contracts.** The following classes of contracts include elements of construction of public improvements as well as personal services and may be awarded under a request for proposals, unless exempt from competitive solicitation.

(i) **Design/Build and CM/GC Contracts.** Contracts for the construction of public improvements using a design/build or construction manager/general contractor determination to construct a project using a design/build or construction manager/general contractor construction method must be approved by the City of Condon City Council or designee, upon application of the Solicitation Agent, in which the Solicitation Agent submits facts that support a finding that
the construction of the improvement under the proposed method is likely to result in cost savings, higher quality, reduced errors, or other benefits to the City of Condon.

(2) **Energy Savings Performance Contracts.** Unless the contract qualifies for award under another classification in this section 8, contractors for energy savings performance contracts shall be selected under a request for proposals in accordance with the City of Condon’s Public Contracting Regulations.

E. **Contracts for Goods and Services.**

(i) **Any Procurement.** The procurement of goods or services, or goods and services in any amount may be made under either an invitation to bid or a request for proposals.

(2) **Procurements Up to $150,000.** The procurement of goods or services, or goods and services, for which the estimated contract price does not exceed $150,000 may be made under an informal solicitation for either quotes or proposals.

F. **Contracts Subject to Award at Solicitation Agent’s Discretion.** The following classes of contracts may be awarded in any manner which the Solicitation Agent deems appropriate to the City of Condon’s needs, including by direct appointment or purchase. Except where otherwise provided the Solicitation Agent shall make a record of the method of award.

(i) **Advertising.** Contracts for placing of notice or advertisements in any medium.

(2) **Amendments.** Contract amendments shall not be considered to be separate contracts if made in accordance with the Public Contracting Regulations.

(3) **Animals.** Contracts for the purchase of animals.

(4) **Contracts Up to $10,000.** Contracts of any type for which the contract price does not exceed $10,000 without a record of the method of award.

(5) **Copyrighted Materials; Library Materials.** Contracts for the acquisition of materials entitled to copyright, including, but not limited to works of art and design, literature and music, or materials even if not entitled to copyright, purchased for use as library lending materials.
(6) **Equipment Repair.** Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.

(7) **Government Regulated Items.** Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.

(8) **Insurance.** Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.

(9) **Non-Owned Property.** Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by City of Condon.

(10) **Sole Source Contracts.** Contracts for goods or services which are available from a single source may be awarded without competition.

(11) **Specialty Goods for Resale.** Contracts for the purchase of specialty goods by City of Condon for resale to consumers.

(12) **Sponsor Agreements.** Sponsorship agreements, under which the City of Condon receives a gift or donation in exchange for recognition of the donor.

(13) **Structures.** Contracts for the disposal of structures located on city-owned property.

(14) **Renewals.** Contracts that are being renewed in accordance with their terms are not considered to be newly issued Contracts and are not subject to competitive procurement procedures.

(15) **Temporary Extensions or Renewals.** Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired, contract, other than a contract for public improvements.

(16) **Temporary Use of City and State Owned Property.** The City of Condon may negotiate and enter into a license, permit or other contract for the temporary use of county-owned property without using a competitive selection process if:
(a) The contract results from an unsolicited proposal to the City of Condon based on the unique attributes of the property or the unique needs of the proposer;

(b) The proposed use of the property is consistent with the City of Condon’s use of property and the public interest; and

(c) The City of Condon reserves the right to terminate the contract without penalty, in the event the City of Condon determines that the contract is no longer consistent with the City’s present or planned use of the property or the public interest.

(17) **Used Property.** A Solicitation Agent may contract for the purchase of used property by negotiation if such property is suitable for the City of Condon’s needs and can be purchased for a lower cost than substantially similarly new property. For this purpose the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by the City of Condon. The City of Condon City Council shall record the findings that support the purchase.

(18) **Utilities.** Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.

G. **Contracts Required by Emergency Circumstances.**

(i) **In General.** When an official with authority to enter into a contract on behalf of the City of Condon determines that immediate execution of a contract within the official’s authority is necessary to prevent substantial damage or injury to persons or property, the official may execute the contract without competitive selection and award or the City of Condon City Council’s approval, but, where time permits, the official shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.

(ii) **Reporting.** An official who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances, (i) document the nature of the emergency; the method used for selection of the particular contractor and the reason why the selection method was deemed in the best interest of the City of Condon and the public, and (2) notify the City of Condon City Council of the facts and circumstances surrounding the emergency execution of the contract.
(3)  **Emergency Public Improvement Contracts.**  A public improvement contract may only be awarded under emergency circumstances if the City of Condon City Council has made a written declaration of emergency. Any Public Improvement Contract awarded under emergency conditions must be awarded
within 60 days following the declaration of an emergency unless the City of Condon City Council grants an extension of the emergency period. Where the time delay needed to obtain a payment or performance bond for the contract could result in injury or substantial property damage, the City of Condon City Council may waive the requirement for all or a portion of required performance and payment bonds.

H. Federal Purchasing Programs. Goods and services may be purchased without competitive procedures under a local government purchasing program administered by the United States General Services Administration (GSA) as provided in this subsection.

(1) The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or contracts submitted to and approved by the City of Condon City Council. The Solicitation Agent shall provide the City of Condon City Council with a copy of the letter, memorandum or other documentation from GSA establishing permission to City of Condon to purchase under the federal program.

(2) The price of the goods or services must be established under price agreements between the federally approved vendor and GSA.

(3) The price of the goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available to the City of Condon.

(4) If a single purchase of goods or services exceeds $150,000, the Solicitation Agent must obtain informal written quotes or proposals from at least two additional vendors (if reasonably available) and find, in writing, that the goods or services offered by GSA represent the best value for City of Condon. This paragraph does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.

I. Cooperative Procurement Contracts. Cooperative procurements may be made without competitive solicitation as provided in the Oregon Public Contracting Code.

J. Surplus Property.

(1) General Methods. Surplus property may be disposed of by any of the following methods upon a determination by the Solicitation Agent that the method of disposal is in the best interest of the City of Condon. Factors that may be considered by the Solicitation Agent
include costs of sale, administrative costs, and public benefits to the City of Condon. The Solicitation Agent shall maintain a record of the reason for the disposal method selected, and the manner of disposal, including the name of the person to whom the surplus property was transferred.

(a) **Governments.** Without competition, by transfer or sale to another county or department or public agency.

(b) **Auction.** By publicly advertised auction to the highest bidder.

(c) **Bids.** By public advertised invitation to bid.

(d) **Liquidation Sale.** By liquidation sale using a commercially recognized third—party liquidator selected in accordance with rules for the award of personal services contracts.

(e) **Fixed Price Sale.** The Solicitation Agent may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.

(f) **Trade-In.** By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.

(g) **Donation.** By donation to any organization operating within or providing a service to residents of City of Condon which is recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

(2) **Disposal of Property with Minimal Value.** Surplus property which has a value of less than $500, or for which the costs of sale are likely to exceed sale proceeds may be disposed of by any means determined to be cost-effective, including by disposal as waste. The official making the disposal shall make a record of the value of the item and the manner of disposal.

(3) **Personal-Use Items.** An item (or indivisible set) of specialized and personal use, other than police officer's handguns, with a current value of less than $100 may be sold to the employee or retired or terminated employee for whose use it was purchased. These items
may be sold for fair market value without bid and by a process deemed most efficient by City of Condon City Council.

(4) **Restriction on Sale to City Employees.** County employees shall not be restricted from competing, as members of the public, for the purchase of publicly sold surplus property, but shall not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.

(5) **Conveyance Purchaser.** Upon the consummation of a sale of surplus personal property, the City of Condon shall make, execute and delivery, a bill of sale signed on behalf of the City of Condon, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.

K. **Concession Agreements.**

(i) **General.** No part of a Concession Agreement shall contain or constitute a waiver of any generally applicable rules, code provisions or requirements of the City of Condon concerning regulation, registration, licensing, inspection, or permit requirements for any construction, rental or business activity.

(2) **Classes of Contracts Eligible for Award Without Competition.** The following concession agreements may be awarded by any method deemed appropriate by the Solicitation Agent, including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.

(a) **Contracts Under $10,000.** Contracts under which the Solicitation Agent estimates that receipts by the City of Condon will not exceed $10,000 in any fiscal year and $50,000 in the aggregate.

(b) **Single Event Concessions.** Concessions to sell or promote food, beverages, merchandise or services at a single public event shall be awarded based on any method determined by the Solicitation Agent to provide a fair opportunity to all persons desiring to operate a concession, but in which the promotion of the public interest and success of the event shall be of predominant importance.
(3) **Competitive Award.** Concession agreements solicited by the City of Condon for the use of designated public premises for a term greater than a single event shall be awarded as follows:

(a) **Small Concessions.** For Concession Agreements for which the concessionaire’s projected annual gross revenues are estimated to be $500,000 or less, the Solicitation Agent has discretion to use either an informal solicitation or formal request for proposals process applicable to contracts for personal services. If the proposals received indicate a probability that the concessionaire’s annual gross revenues will exceed $500,000, the Solicitation Agent may, but shall not be required to, reissue the solicitation as a request for proposals.

(b) **Major Concessions.** Concession agreements for which the concessionaire’s projected annual gross revenues under the contract are estimated to exceed $500,000 annually shall be awarded using a request for proposals.

9. **Public Contracts – Informal Solicitation Procedures.** The City of Condon may use the following procedure for informal solicitations in lieu of the procedures set forth in the Model Rules.

A. **Informally Solicited Quotes and Proposals.**

(i) **Solicitation of Offers.** When authorized by these regulations, an informal solicitation may be made by general or limited advertisement to a certain group of vendors, by direct inquiry to persons selected by the Solicitation Agent, or in any other manner which the Solicitation Agent deems suitable for obtaining competitive quotes or proposals. The Solicitation Agent shall deliver or otherwise make available to potential offerors, a written scope of work, a description of how quotes or proposals are to be submitted and description of the criteria for award.

(ii) **Award.** The Solicitation Agent shall attempt to obtain a minimum of three written quotes or proposals before making an award. If the award is made solely on the basis of price, the Solicitation Agent shall award the contract to the responsible offeror that submits the lowest responsive quote. If the award is based on criteria other than or in addition to, price, the Solicitation Agent shall award the contract to the responsible offeror that will best serve the interest of City of Condon, based on the criteria for award.
(3) **Records.** A written record of all persons solicited and offers received shall be maintained. If three offers cannot be obtained, a lesser number will suffice, provided that a written record is made of the effort to obtain the quotes.

**B. Qualified Pools.**

(i) **General.** To create a qualified pool, the City of Condon City Council may invite prospective contractors to submit their qualifications to the City of Condon for inclusion as participants in a pool of contractors qualified to provide certain types of goods, services, or projects including personal services, and public improvements.

(ii) **Advertisement.** The invitation to participate in a qualified pool shall be advertised in the manner provided for advertisements of invitations to bid and requests for proposals by publication in at least one newspaper of general statewide circulation. If qualification will be for a term that exceeds one year or allows open entry on a continuous basis, the invitation to participate in the pool must be re-published at least once per year and shall be posted at City of Condon's main office and on its website.

(iii) **Contents of Solicitation.** Requests for participation in a qualified pool shall describe the scope of goods or services or projects for which the pool will be maintained, and the minimum qualifications for participation in the pool, which may include, but shall not be limited to qualifications related to financial stability, contracts with manufacturers or distributors, certification as an emerging small business, insurance, licensure, education, training, experience and demonstrated skills of key personnel, access to equipment, and other relevant qualifications that are importance to the contracting needs of the City of Condon.

(iv) **Contract.** The operation of each qualified pool may be governed by the provisions of a pool contract to which the City of Condon and all pool participants are parties. The Contract shall contain all terms required by the City of Condon, including, without limitation, terms related to price, performance, business registration or licensure, continuing education, insurance, and requirements for the submission, on an annual or other periodic basis, of evidence of continuing qualification. The qualified pool contract shall describe the selection procedures that the City of Condon may use to issue contract job orders. The selection procedures shall be objective and open to all pool participants and afford all participants the opportunity to compete for or receive job awards. Unless expressly
provided in the contract, participation in a qualified pool will not entitle a participant to the award of any City of Condon contract.

(5) **Use of Qualified Pools.** Subject to the provisions of these regulations concerning methods of solicitation for classes of contracts, the City of Condon City Council shall award all contracts for goods or services of the type for which a qualified pool is created from among the pool’s participants, unless the City of Condon City Council determines that the best interests of the City of Condon require solicitation by public advertisement, in which case, pool participants shall be notified of the solicitation and invited to submit competitive proposals.

(6) **Amendment and Termination.** The City of Condon City Council may discontinue a qualified pool at any time. Or may change the requirements for eligibility as a participant in the pool at any time, by giving notice to all participants in the qualified pool.

(7) **Protest of Failure to Qualify.** The City of Condon City Council shall notify any applicant who fails to qualify for participation in a pool that it may appeal a qualified pool decision to the City of Condon Council in the manner described in section 13.

10. **Public Contracts – Use of Brand Name Specifications for Public Improvements.**

   A. **In General.** Specifications for contracts shall not expressly or implicitly require any product by one brand name or mark, nor the product of one particular manufacturer or seller, except for the following reasons:

   (1) It is unlikely that such exemption will encourage favoritism in the awarding of Public Improvement Contracts or substantially diminish competition for Public Improvement Contracts; or

   (2) The specification of a product by brand name or make, or the product of a particular manufacturer or seller, would result in substantial cost savings to the City of Condon; or

   (3) There is only one manufacturer or seller of the product of the quality required; or

   (4) Efficient utilization of existing equipment, systems or supplies requires the acquisition of compatible equipment or supplies.

   B. **Authority of the City of Condon Board of Councilors.** The City of Condon City Council shall have authority to determine whether an exemption for
the use of a specific brand name specification should be granted by recording findings that support the exemption based on the provisions of subsection A.

C. **Brand Name or Equivalent.** Nothing in this section 10 prohibits the City of Condon from using a “brand name or equivalent” specification, from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the City of Condon, or from establishing a qualified product list.

## Public Contracts – Bid, Performance and Payment Bonds.

A. **Solicitation Agent May Require Bonds.** The Solicitation Agent may require bid security and a good and sufficient performance and payment bond even though the contract is of a class that is exempt from the requirement.

B. **Bid Security.** Except as otherwise exempted, the solicitations for all contracts that include the construction of a public improvement and for which the estimated contract price will exceed $75,000 shall require bid security. Bid security for a request for proposal may be based on City of Condon’s estimated contract price.

C. **Performance Bonds.**

(1) **General.** Except as provided in these regulations, all public contracts are exempt from the requirement for the furnishing of a performance bond.

(2) **Contracts Involving Public Improvements.** Prior to executing a contract for more than $50,000 that includes the construction of a public improvement, the contractor must deliver a performance bond in an amount equal to the full contract price conditioned on a faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The performance bond must be solely for the protection of the City of Condon and any public agency that is providing funding for the project for which the contract was awarded.

(3) **Cash-in-Lieu.** The City of Condon City Council may permit the successful offeror to submit a cashier’s check or certified check in lieu of all or a portion of the required performance bond.

D. **Payment Bonds.**
(i) General. Except as provided in these regulations, all public contracts are exempt from the requirement for the furnishing of a payment bond.

(2) Contracts Involving Public Improvements. Prior to executing a contract for more than $50,000 that includes the construction of a public improvement, the contractor must deliver a payment bond equal to the full contract price, solely for the protection of a claim under ORS 279C.600.

E. Design/Build Contracts. If the public improvement contract is with a single person to provide both design and construction of a public improvement, the obligation of the performance bond for the faithful performance of the contract must also be for the preparation and completion of the design and related services covered under the contract. Notwithstanding when a cause of action, claim or demand accrues or arises, the surety is not liable after final completion of the contract or longer if provided for in the contract, for damages of any nature, economic or otherwise and including corrective work, attributable to the design aspect of a design-build project, or for the costs of design revisions needed to implement corrective work.

F. Construction Manager/General Contractor Contracts. If the public improvement contract is with a single person to provide construction manager and general contractor services, in which a guaranteed maximum price may be established by an amendment authorizing construction period services following preconstruction period services, the contractor shall provide the bonds required by subsection A of this section upon execution of an amendment establishing the guaranteed maximum price. The City of Condon City Council shall also require the contractor to provide bonds equal to the value of construction services authorized by any early work amendment in advance of the guaranteed maximum price amendment. Such bonds must be provided before construction starts.

G. Surety; Obligation. Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in Oregon. The bonds may not constitute the surety obligation of an individual or individuals. The performance and payment bonds must be payable to City of Condon or to the public agency or agencies for whose benefit the bond is issued, as specified in the solicitation documents, and shall be in a form approved by the City of Condon City Council.

H. Emergencies. In cases of emergency, or when the interest or property of the City of Condon probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient performance bond

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and a good and sufficient payment bond for the faithful performance of any public improvement contract may be excused, if a declaration of such emergency is made in accordance with the provisions of section 8.G, unless the City of Condon City Council requires otherwise.

12. **Public Contracts – Electronic Advertisement of Public Improvement Contracts.** In lieu of publication in a newspaper of general circulation in City of Condon’s newspapers of record, the advertisement for an invitation to bid or request for proposals may be published electronically by posting on City of Condon’s website, provided that the following conditions are met:

A. The placement of the advertisement is on a location within the website that is maintained on a regular basis for the posting of information concerning solicitations for projects of the type for which the invitation to bid or request for proposals is issued; and

B. The Solicitation Agent determines that the use of electronic publication will be at least as effective in encouraging meaningful competition as publication in a newspaper of general circulation in City of Condon’s metropolitan area and will provide cost savings for the City of Condon, or that the use of electronic publication will be more effective than publication in a newspaper of general circulation in City of Condon’s metropolitan area in encouraging meaningful competition.

13. **Appeal of Debarment or Prequalification Decision.**

A. **Right to Hearing.** Any person who has been debarred from competing for county contracts or for whom prequalification has been denied, revoked or revised may appeal the Solicitation Agent’s decision to the City of Condon City Council as provided in this section 13.

B. **Filing of Appeal.** The person must file a written notice of appeal with the City of Condon City Council within three (3) business days after the prospective contractor’s receipt of notice of the determination of debarment, or denial of prequalification.

C. **Hearing.** The procedure for appeal from a debarment or denial, revocation or revision of prequalification shall be as follows:

(1) Promptly upon receipt of notice of appeal, the City of Condon City Council shall notify the appellant of the time and place of the hearing;

(2) The City of Condon City Council shall conduct the hearing and decide the appeal within 30 days after receiving notice of the appeal; and
At the hearing, the City of Condon City Council shall consider de novo the notice of debarment, or the notice of denial, revocation or revision of prequalification, the standards of responsibility, upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.

D. Decision. The City of Condon City Council shall set forth in writing the reasons for the decision.

E. Costs. The City of Condon City Council may allocate the City of Condon’s costs for the hearing between the appellant and the City of Condon. The allocation shall be based upon facts found by the City of Condon City Council and stated in the City of Condon City Councils’ decision that, in the City of Condon City Council’s opinion, warrant such allocation of costs. If the City of Condon City Council does not allocate costs, the costs shall be paid as by the appellant, if the decision is upheld, or by the City of Condon, if the decision is overturned.

F. Judicial Review. The decision of the City of Condon City Council may be reviewed only upon a petition in the circuit court of City of Condon filed within 15 days after the date of the City of Condon City Council’s decision.

II. Emergency Adoption
An emergency is hereby declared to make this ordinance immediately effective upon passage to enable county departments to procure items in the most cost effective and efficient manner.

The foregoing ordinance was first read by title only in accordance with Chapter VII, Section 36 of the City Charter on the ___ day of ____, 2018, and duly PASSED and ADOPTED this ___ day of ____, 2018.

________________________  __________________
City Recorder/Administrator     Mayor

PASSED AND ADOPTED this ___ day of December, 2018.

Reviewed as to form:

________________________
Wyatt Baum, Legal Council