

TITLE III: ADMINISTRATION

Chapter

- 30. CITY COUNCIL**
- 31. OFFICIALS, EMPLOYEES, AND ORGANIZATIONS**
- 32. FINANCES**

CHAPTER 30: CITY COUNCIL

Section

- 30.01 Rules for government and proceedings
- 30.02 Meetings
- 30.03 Local Contract Review Board

§ 30.01 RULES FOR GOVERNMENT AND PROCEEDINGS.

The following rules are hereby adopted for the government and regulation of the proceedings of the City Council.

(A) *Rule 1.* The Mayor or President of the City Council or, in case of their absence, the City Recorder shall call the members to order at the hour designated for the meeting. Should there not be a quorum present, it shall be the duty of the police to immediately inform the absent members, except those known to be unavoidably detained, that their presence is required to enable the City Council to proceed to business. Should they fail to appear on such notice, the members present shall adjourn to the next regular meeting of the City Council.

(B) *Rule 2.* A quorum being present, the City Council shall proceed, in the absence of the Mayor and President of the City Council, to appoint a President pro tem after which the first business in order after the roll is called shall be the reading of the record of the preceding meeting, by the City Recorder, which, if not objected to, shall be considered as approved.

(C) *Rule 3.* The presiding officer shall announce at each meeting of the City Council the business in order agreeable to the rules, and no business shall be taken up or considered until the class to which it belongs shall be declared in order, unless the City Council shall otherwise order by a majority vote, provided that communications from the Mayor may be read at any time.

(D) *Rule 4.* Business of the City Council shall be presented in the following manner:

- (1) Petitions, remonstrances, and communications;
- (2) Claims against the city;
- (3) Reports from commissioners;

- (4) Reports of officers;
- (5) Reports and business on the table;
- (6) Reading ordinances the first and second time;
- (7) Reading engrossed ordinances the third time; and
- (8) Miscellaneous business.

(E) *Rule 5.* The presiding officer shall preserve order and decorum, may speak to points of order in preference to other members, and shall decide all questions of order subject to an appeal to the City Council by any two members, on which appeal no member shall speak more than once without leave of the City Council.

(F) *Rule 6.* Questions shall be distinctly put in this form: “as many as are of the opinion that (as the questions may be), say ‘aye.’” “As many as are of the contrary opinion, say ‘nay.’” If the presiding officer shall doubt or a division be called for, the ayes and nays shall be taken.

(G) *Rule 7.* All questions relating to priority shall be decided without debate.

(H) *Rule 8.* When two or more members happen to rise at once, the presiding officer shall name who is to speak first.

(I) *Rule 9.* No member shall speak more than twice on the same subject without leave of the City Council nor more than once until every member choosing to speak shall have spoken.

(J) *Rule 10.* When a question is under debate, no motion shall be made but to adjourn, to lay on the table, to postpone to a day certain or indefinitely, or to refer or to amend, which several motions shall have precedence in the order in which they are here stated. *Robert’s Rules of Order* shall be considered and taken as authority in deciding any question arising on points of order not embraced in these rules.

(K) *Rule 11.* A motion to adjourn when once put and voted on shall not again be in order until some other business shall have been taken up and shall always be decided without debate.

(L) *Rule 12.* When any member is about to speak in debate or deliver any matter to the City Council, he or she shall rise from his or her seat and respectfully address the presiding officer and shall confine himself or herself to the question in debate and avoid personalities.

(M) *Rule 13.* Every member who shall be present when a question is put shall vote for or against the same unless the City Council shall excuse him or her, but no member shall be permitted to vote on a question when the ayes and nays are called for unless present when his or her name is called in its regular order.

(N) *Rule 14.* A member of the City Council acting as President pro tem may vote in all cases in which he or she might vote if not acting; provided, the President of the City Council shall not have a vote when occupying the chair except in case of a tie vote.

(O) *Rule 15.* Whenever it shall be decided that the City Council goes into Committee of the Whole, the presiding officer shall leave the chair and appoint a Chairperson of the Committee of the Whole who shall report the proceedings of the Committee.

(P) *Rule 16.* No motion shall be considered unless the same shall be seconded. When a motion is seconded, it shall be stated by the presiding officer before debate.

(Q) *Rule 17.* When a question has once been decided, it shall be in order for any member who voted in the majority to move for a reconsideration thereof, but no motion for the reconsideration of a vote shall be made after the ordinance, resolution, or act shall have gone out of the possession of the City Council, and no motion for such reconsideration shall be made more than once provided the motion to reconsider is made the same day of the passage of the matter in question.

(R) *Rule 18.* Upon a division of the City Council, the names of those who voted for and those who voted against a question shall be entered upon the minutes when any one member requires it; in such case, it shall be the duty of the City Recorder to enter on the minutes the name of the member so calling for a division. In all authorizations to expend appropriations of the public money, the ayes and nays shall be called by the City Recorder and recorded, and no authorization shall be deemed carried except by a majority of the City Council present. In case of an equal division, or tie in votes, of the City Council on such propositions, the Mayor shall have the casting vote.

(S) *Rule 19.* All committees shall report the facts in relation to the matter or subject referred, with their opinion thereon, in writing, and no report shall be received as the report of a committee except the same be signed by a majority of the committee.

(T) *Rule 20.* All regular committees and all special committees shall be appointed by the Mayor. In the appointment of a committee, the member first named shall act as Chairperson thereof.

(U) *Rule 21.* Every ordinance shall receive three readings previous to its being passed but shall not be read more than twice at any one meeting except by unanimous consent or when an emergency clause exists, and the Mayor shall announce before each reading whether it shall be first, second, or third. Each ordinance, after it becomes a law, shall be enrolled by the City Recorder in a book kept for that purpose.

(V) *Rule 22.* No standing rule, as provided by this section, shall be rescinded or suspended except by a majority vote of the members present, and the ayes and nays shall be recorded on any motion to suspend a rule.

(W) *Rule 23.* Upon the final passage of every ordinance, the questions shall be taken by ayes and nays.

(X) *Rule 24.* A member called to order shall immediately sit down unless permitted to explain, and the City Council, if appealed to, shall decide on the case without debate. If there are no appeals, the decision of the presiding officer shall be submitted to.

(Y) *Rule 25.* The motion “to lay on the table” shall be decided without debate.
(Prior Code, § 30.01) (Ord. 11-D, passed 11-1-1995)

§ 30.02 MEETINGS.

(A) *Regular meetings.* The day and hour of the regular meetings of the City Council shall be the first Wednesday in each month at 7:00 p.m.

(B) *Special meetings.*

(1) Special meetings may be called at any time by the Mayor or three City Council members by written notice delivered to each member then present within the city no earlier than three and no later than 48 hours prior to the time specified for the purpose of such special meeting.

(2) No other business shall be transacted at any special meeting than that named in said notice and appurtenant thereto.

(C) *Meetings open to the public.*

(1) All meetings of the City Council shall be open to the public and all persons shall be permitted to attend any meeting, except as otherwise provided by O.R.S. 192.610 through 192.690.

(2) No quorum of the City Council shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by O.R.S. 192.610 through 192.690.

(3) The City Council shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age, or national origin is practiced.

(4) Nothing contained in O.R.S. 192.610 through 192.690 shall be construed to prevent the City Council from holding executive session during a regular, special, or emergency meeting after the presiding officer has identified the authorization under O.R.S. 192.610 through 192.690 for the holding of such executive session.

(Prior Code, § 30.02) (Ord. 2-D, passed 2-4-1959; Ord. 11-D, passed 11-1-1995)

Statutory reference:

Related provisions, see O.R.S. 192.610 through 192.690

§ 30.03 LOCAL CONTRACT REVIEW BOARD.

The City Council is hereby designated as the Local Contract Review Board pursuant to O.R.S. 279A.060.

(Prior Code, § 30.03) (Ord. 03-02, passed 11-6-2002)

Statutory reference:

Related provisions, see O.R.S. 279A.060

CHAPTER 31: OFFICIALS, EMPLOYEES, AND ORGANIZATIONS

Section

General Provisions

- 31.01 Employee Handbook adopted by reference

Planning Commission

- 31.15 Membership
31.16 Terms
31.17 Organization and officers
31.18 Meetings
31.19 Powers of the Planning Commission
31.20 Expenditures
31.21 Removal from Planning Commission

Fiber Council

- 31.35 Title and effective date
31.36 Definitions
31.37 Intent and purpose
31.38 Agency powers and responsibilities
31.39 Severability and corrections

Fire Services Agency

- 31.50 Title and effective date
31.51 Definitions
31.52 Intent and purpose
31.53 Agency powers and responsibilities
31.54 Severability and corrections
Appendix A: Intergovernmental Agreement for Fiber Project
Appendix B: Intergovernmental Agreement for fire services

GENERAL PROVISIONS**§ 31.01 EMPLOYEE HANDBOOK ADOPTED BY REFERENCE.**

This code hereby adopts the *City of Condon Employee Handbook* by reference.
(Prior Code, Chapter 31) (Ord. 2010-02, passed 6-2-2010)

PLANNING COMMISSION**§ 31.15 MEMBERSHIP.**

The Planning Commission of the city shall consist of five members appointed by the Mayor with the consent of the City Council. The five members are to be residents of the city. Members shall serve without compensation.

(Prior Code, § 33.01) (Ord. 06-02, passed 12-14-2006)

§ 31.16 TERMS.

At the first meeting of the Planning Commission, the five appointed members shall choose their terms of office by lot, such terms being staggered to cover a four-year period. Immediately thereafter, the members shall notify the Mayor and City Council in writing of such allotment. Their successors shall hold office for four years. Any vacancy shall be filled by the Mayor for the unexpired portion of the term.

(Prior Code, § 33.02) (Ord. 06-02, passed 12-14-2006)

§ 31.17 ORGANIZATION AND OFFICERS.

(A) The Planning Commission, at its first meeting, shall elect a Chairperson and Vice Chairperson who shall be appointed by the Mayor, with the consent of City Council, and who shall hold office during the pleasure of the Planning Commission.

(B) The Mayor, with the consent of the City Council, shall select a Secretary who need not be a member of the Planning Commission. The Secretary shall keep an accurate record of all Planning Commission proceedings. A copy of the minutes of each Planning Commission meeting shall be delivered to the City Administrator for filing and said minutes. The Planning Commission shall provide the City Council all Planning Commission activities and actions.

(Prior Code, § 33.03) (Ord. 06-02, passed 12-14-2006)

§ 31.18 MEETINGS.

Three members of the Planning Commission shall constitute a quorum. The Planning Commission may make and alter rules and regulations for its government and procedure consistent with laws of the state and with the city charter and code. It shall meet as necessary at such times and places as may be fixed by the Planning Commission. Special meetings may be called at any time by the President or three members by written notice served upon each member of the Planning Commission then present within the city at least 24 hours before the time specified for the proposed meeting.

(Prior Code, § 33.04) (Ord. 11-D, passed 11-1-1995; Ord. 06-02, passed 12-14-2006)

§ 31.19 POWERS OF THE PLANNING COMMISSION.

(A) The Planning Commission may make recommendations and suggestions to the City Council and other public officials and individuals concerning any matter relating to community planning and development. The Planning Commission shall also have all the powers which are granted by ordinances of this city or by general laws of the state. The City Council and administrative officers shall procure the recommendations of the Planning Commission where required by such state laws and city code on such matters as land subdivision, street alteration, property acquisition, zoning and locations, and design of improvements.

(B) All recommendations made to the Council by the Planning Commission shall be in writing.

(Prior Code, § 33.05) (Ord. 06-02, passed 12-14-2006)

§ 31.20 EXPENDITURES.

The Planning Commission shall have no authority to make any expenditures on behalf of the city nor to obligate the city for the payment of any sum of money, except as herein provided, and then only after the City Council shall have first authorized such expenditures by appropriate ordinance or resolution which ordinance or resolution shall provide the administrative method by which such funds shall be drawn and expended.

(Prior Code, § 33.06) (Ord. 06-02, passed 12-14-2006)

§ 31.21 REMOVAL FROM PLANNING COMMISSION.

(A) Any member of the Planning Commission may be removed by the City Council, after a hearing, for misconduct or non-performance of duty. A member who is absent from three consecutive meetings is presumed to be in non-performance of duty, and the City Council shall declare the position vacant unless they find otherwise.

(B) Removal of any member of the Planning Commission shall be only upon a majority vote of the entire Council.

(Prior Code, § 33.07) (Ord. 06-02, passed 12-14-2006)

FIBER COUNCIL**§ 31.35 TITLE AND EFFECTIVE DATE.**

(A) This subchapter may be referred to as the “Fiber Council Ratifying Ordinance” and will be cited and referred to herein as “this subchapter.”

(B) The effective date of the agreement is October 30, 2019.
(Ord. 2020-02, passed 10-15-2019)

§ 31.36 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AGREEMENT. The intergovernmental agreement between the parties creating the agency.

CITY. The City of Condon, an Oregon municipal corporation.

CITY COUNCIL. The Condon City Council.

FIBER COUNCIL. The Fiber Council.

FIBER PROJECT. The development of underground fiber optic telecommunications linked between Arlington, Oregon and Condon, Oregon.

LAW(S). All federal, state, and local laws, statutes, ordinances, and/or regulations directly or indirectly affecting agency, the agreement, and O.R.S. Chapter 190 all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

PARTY* or *PARTIES. Gilliam County and the City of Condon.

SERVICE AREA. All areas lying within the geographic boundaries between Arlington, Oregon and Condon, Oregon.

(Ord. 2020-02, passed 10-15-2019)

Statutory reference:

Related provisions, see O.R.S. Chapter 190

§ 31.37 INTENT AND PURPOSE.

(A) *Intent.* The City Council hereby declares its intent to create the intergovernmental entity to be known as the Fiber Council by intergovernmental agreement, which is codified in Appendix A of this chapter.

(B) *Purpose.* This Fiber Council's purpose includes, without limitation, the following:

(1) To establish, oversee, and administer the financial services associated with the Fiber Project;

(2) To provide accounting and booking services to split revenue and expenses from the Fiber Project;

(3) To establish and maintain such services that will be of substantial benefit to the citizens of the service area and the public in general; and

(4) To carry out such other necessary and/or appropriate responsibilities and/or functions as provided by the parties.

(Ord. 2020-02, passed 10-15-2019)

§ 31.38 AGENCY POWERS AND RESPONSIBILITIES.

(A) The Fiber Council shall have the responsibility and authority for overseeing and administering the financial services associated with the Fiber Project including, but not limited to, providing accounting and bookkeeping services to split revenue and expenses from the Fiber Project; this includes fees to Inland Development Corporation and other professional fees.

(B) The Fiber Council shall have the power to enter into agreements with other public or private entities and to exercise all powers granted to the Fiber Council pursuant to the applicable acts or laws of each party which are necessary or desirable to economically and efficiently administer financial services for the Fiber Project.

(C) The Fiber Council will have the power to adopt, through action of the Fiber Council, such bylaws, rules, regulations, standards, and/or policies necessary to carry out the purposes of Fiber Council and/or this agreement and to exercise all powers pursuant to the laws including, without limitation, the principal acts of the parties and O.R.S. Chapter 190 which are necessary and/or appropriate to carry out the purposes of the Fiber Council and/or this agreement.

(Ord. 2020-02, passed 10-15-2019)

Statutory reference:

Related provisions, see O.R.S. Chapter 190

§ 31.39 SEVERABILITY AND CORRECTIONS.

(A) All pronouns contained in this subchapter and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural, and the plural includes the singular. The word “or” is not exclusive. The words “include,” “includes,” and “including” are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended.

(B) If any section, sentence, clause, and/or portion of this subchapter is, for any reason, held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, sentence, clause, and/or portion will yield to a construction permitting enforcement to the maximum extent permitted by applicable law and not affect the validity, enforceability, and/or constitutionality of the remaining portion of this subchapter. This subchapter may be corrected by order of the Fiber Council to cure editorial and/or clerical errors.

(Ord. 2020-02, passed 10-15-2019)

FIRE SERVICES AGENCY**§ 31.50 TITLE AND EFFECTIVE DATE.**

(A) This subchapter may be referred to as the “Gilliam County Fire Services Agency Ratifying Ordinance” and will be cited and referred to herein as “this subchapter.”

(B) The effective date of the agreement is July 1, 2022.

(Ord. 2022-01, passed 11-3-2021)

§ 31.51 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AGENCY. The Gilliam County Fire Services Agency.

AGREEMENT. The Intergovernmental Agreement for Fire Services dated effective July 1, 2022 creating the agency and entered into between the parties in Appendix B of this chapter.

BOARD. The agency’s then-appointed governing body.

CITY. City of Condon, an Oregon municipal corporation.

CITY COUNCIL. The City of Condon City Council.

COORDINATOR. See definition assigned in the agreement.

FIRE COORDINATION SERVICES or SERVICES. Meaning assigned to such term in the agreement.

LAW(S). All federal, state, and local laws, statutes, ordinances, and/or regulations directly or indirectly affecting agency, the agreement, and/or the dispatch services including, without limitation, the Americans with Disabilities Act of 1990 with the rules and regulations promulgated thereunder and O.R.S. Chapter 190 all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

(Ord. 2022-01, passed 11-3-2021)

Statutory reference:

Related provisions, see O.R.S. Chapter 190

§ 31.52 INTENT AND PURPOSE.

(A) *Intent.* The City Council hereby declares its intent to create the intergovernmental entity to be known as the Gilliam County Fire Services Agency by intergovernmental agreement.

(B) *Purpose.* The agency's purposes include, without limitation, the following:

(1) Review, evaluate, and address fire service delivery challenges in a cost-effective manner by providing technical assistance to citizens of the county;

(2) Endeavor to ensure that citizens of the county receive adequate fire emergency services;

(3) Recruit, select, and employ the Coordinator;

(4) Provide a forum for communication and consultation among the parties; and

(5) Carry out such other responsibilities and functions as determined necessary or appropriate by the Board.

(Ord. 2022-01, passed 11-3-2021)

§ 31.53 AGENCY POWERS AND RESPONSIBILITIES.

(A) The agency will have responsibility and authority to coordinate the provision of emergency fire services to citizens of the county, including functions related thereto, and to subject to the terms of the agreement and/or O.R.S. Chapter 190, and perform such other responsibilities as may be assigned by the parties from time to time.

(B) Without otherwise limiting the generality of division (A) above and being subject to the laws, the agency will have the following general powers:

(1) Adopt, through action of the Board, such bylaws, rules, regulations, standards, and/or policies necessary to carry out the purposes of agency and/or the agreement;

(2) Perform and exercise all powers pursuant to the laws, including, without limitation, the principal acts of the parties and O.R.S. Chapter 190 which are necessary and/or appropriate to perform or cause to be performed the services; and

(3) Exercise all powers pursuant to the laws including, without limitation, the principal acts of the parties and O.R.S. Chapter 190 which are necessary and/or appropriate to carry out the purposes of agency and/or the agreement.

(Ord. 2022-01, passed 11-3-2021)

Statutory reference:

Related provisions, see O.R.S. Chapter 190

§ 31.54 SEVERABILITY AND CORRECTIONS.

(A) All pronouns contained in this subchapter and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural, and the plural includes the singular. The word “or” is not exclusive. The words “include,” “includes,” and “including” are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended.

(B) If any section, sentence, clause, and/or portion of this subchapter is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, sentence, clause, and/or portion will yield to a construction permitting enforcement to the maximum extent permitted by applicable law and not affect the validity, enforceability, and/or constitutionality of the remaining portion of this subchapter. This subchapter may be corrected by order of the City Council to cure editorial and/or clerical errors.

(Ord. 2022-01, passed 11-3-2021)

APPENDIX A: INTERGOVERNMENTAL AGREEMENT FOR FIBER PROJECT

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT is made between the GILLIAM COUNTY (“County”) a political subdivision of the State of Oregon, and THE CITY OF CONDON (“City”), an Oregon municipal corporation, for the purpose of establishing a Fiber Council for the City-County Fiber Project that serves the residents of both Gilliam County and the City of Condon.

RECITALS

- A. Each party has entered into an Agreement with Inland Development Corporation for the development of an underground fiber optic telecommunications link between Arlington, Oregon, and Condon, Oregon, in order to promote the availability of broadband and other advanced telecommunications services to residents and businesses throughout Gilliam County, including those located within the City’s boundaries (collectively referred to in this Agreement as “the Fiber Project”);
- B. WHEREAS, since each Party’s Agreement with Inland Development Corporation depends on the financial contribution of the other Party to the payment of the overall costs associated with the Project, the Parties wish to enter into an IGA setting forth their understanding regarding the funds each will contribute toward the Fiber Project and the management of financial services of the Fiber Project and creating the Fiber Council;
- C. WHEREAS, the Parties find the performance of this IGA will benefit the public; and,
- D. WHEREAS, this IGA is entered into pursuant to O.R.S. 190.010, et seq.

NOW, THEREFORE, in consideration of the mutual benefits and obligations set forth herein; the parties hereby agree as follows:

AGREEMENT

1. The Board; Authority and Party Responsibilities

- a. **Creation.** Pursuant to this Agreement, the Fiber Council (the “Council”) is hereby created as an intergovernmental entity pursuant to O.R.S. Chapter 190. The Council shall be governed by a Fiber Council Board of Directors (the “Board”). The Board shall be the governing body and shall exercise broad authority over all matters of Council concern except as limited in Section 1(b) below or elsewhere in this Agreement.
- b. **General Powers; Responsibilities.** Initially, it is the intent of the Parties that the Council shall have only the limited authority as expressly described below.

However, the Parties may in the future broaden the scope of the Council's authority by amending this Agreement as provided in Section 2(c) below.

- i. The Board shall have the power to adopt, through action of its Board of Directors, such bylaws, rules, regulations and policies necessary to further the purposes of this Agreement.
 - ii. The Board shall have the responsibility and authority for overseeing and administering the financial services associated with the Fiber Project, including, but not limited to: providing accounting and bookkeeping services to split revenue and expenses from the Fiber Project (including fees to Inland Development Corporation and other professional fees), as further detailed in subsection vi and vii below. Such services shall be referred to in this Agreement as "Financial Services."
 - iii. The Board shall have the power to enter into agreements with other public or private entities and to exercise all powers granted to the Council under this Agreement pursuant to the applicable acts or laws of each Party which are necessary or desirable to economically and efficiently administer Financial Services for the Fiber Project.
 - iv. Gilliam County shall establish a separate fund in its budget to record receipt of all Fiber Project revenues and expenses. Gilliam County shall, in accordance with Oregon Budget Law, record and account for all such revenues and expenses.
 - v. All Board-approved Fiber Project expenses will be shared equally between the parties 50/50 and will be paid out of the Fiber Project revenues receipted into Gilliam County for Fiber Project leased items or other Fiber Project revenues. If Fiber Project expenses exceed revenues at the end of each fiscal year, Gilliam County will notify the City in writing by September 1 of the following fiscal year and the City will promptly issue payment to Gilliam County for half of the excess amount. Gilliam County will pay the remaining half of the excess expenses.
 - vi. All Fiber Project Revenues will be receipted into Gilliam County, including but not limited to any revenues for Fiber Project leased items. If revenue exceeds expenses at the end of each fiscal year, the Parties agree Gilliam County will receive 2/3 of such excess annual revenue and the City will receive 1/3.
- c. **Offices.** The offices of the Council shall be located at 221 S. Oregon Street, Condon, Oregon 97823.

2. The Board of Directors.

- a. **The Board Membership; Director Terms.** The Council Board of Directors shall consist of five (5) members, each of whom must be a qualified elector residing within the boundaries of either Party. The governing body of each Party will appoint two members, including at

least one elected official. The fifth member will be appointed by the other four Board members.

The term of each Director shall be one year; however, the Directors shall serve at the pleasure of their appointing governing body and may be removed at any time upon the sole discretion of the appointing governing body. Board members are allowed to send a proxy from his or her own jurisdiction, with voting authority, to Board meetings.

- b. Voting and Quorum.** Each Director shall have one vote. A majority of all Directors is required for a quorum. An affirmative majority vote of all Directors is required for the passage of any item before the Council, subject to any additional voting requirements as provided in this Agreement, including specifically the additional voting requirements for amending this Agreement in Subsection 4(c), below.
- c. Authority.** In addition to the General Powers described in Section 1(b) above, the Board of Directors shall have authority to do the following:
 - i. Adopt bylaws for the Board, if deemed necessary, which shall set forth the rules by which the Board shall be run. The Bylaws may be amended from time to time by a majority vote of the Council of Directors. In the event of a conflict between any bylaws or administrative rules and this Agreement, this Agreement shall prevail.
 - ii. Oversee and have full responsibility for all matters pertaining to the development and operations of the Board.
 - iii. Enter into contracts for goods and services for the Council development and operations or for the provision of Financial Services, as described above, subject to budgetary constraints and requirements.
 - iv. Review and approve the Council budget pursuant to Oregon Local Budget Law, when applicable.
 - v. Determine the projected costs to be allocated to each Party in accordance with this Agreement.
 - vi. Provide guidelines, direction and approval, if appropriate, of Standard Operating Procedures.
 - vii. Approve capital purchase requests, if not previously approved in the budget.
 - viii. Appoint advisory committees to consider any issue before it, if it so desires.
 - ix. Establish the Council mission and goals.

x. Review performance relative to the implementation of the Council policies and budget.

d. Meetings. The Board will initially meet monthly in order to develop necessary policies and procedures. Once the Board is fully operational, the frequency of the meetings will be determined at the discretion of the Council, but in no case shall the Council meet less than one (1) time per year.

3. Budget. The Board of Directors shall prepare the annual operating budget. The Board shall adopt a final budget, in accordance with O.R.S. 294.900 to 294.930, no later than March 1st of each preceding year. The budget period shall be on a fiscal year basis beginning on the first of July each year. The Board shall follow the budget process of Gilliam County and Oregon State Budget Law.

a. Approval Stage. The Board of Directors shall consider and shall adopt said budget, or a modification thereof, and forward it to Gilliam County on or before the first day of March.

b. Adopted Stage. The Gilliam County Court may approve the budget as a part of the Gilliam County budget for the ensuing fiscal year or may remand it back to the Fiber Council for further consideration and/or amendments. If remanded back to the Fiber Council, Gilliam County shall provide the reasons for the remand.

c. Budget Changes. In the event that there are any Fiber Project changes that require a supplemental budget, such changes shall go through the budget stages set forth herein and shall comply with all applicable Oregon Local Budget Laws.

4. Term, Termination and Amendment.

a. Term. Notwithstanding the date of counterparts, the effective date of this Agreement, and all of the obligations set forth shall be deemed in full force and effect for all purposes when signed by both Parties. The Term of this Agreement shall be perpetual unless terminated as provided below.

b. Termination; Withdrawal. This Agreement, and all obligations herein, may be terminated, in writing, by mutual consent of all the Parties. In such a termination, the Parties agree to follow the Dissolution procedures set out in this Agreement. One party may withdraw by providing written notice of its intent to withdraw at least six (6) months in advance. Such unilateral withdrawal shall take effect no sooner the last day of the fiscal year in which the notice became effective. In the event of a termination or withdrawal, each Party agrees to pay its debts or liabilities due and owing prior to the effective date of the termination or withdrawal and to cooperate with the Dissolution process provided in this Agreement.

c. Amendment. This Agreement may be amended only upon a unanimous vote of the Council of Directors and written approval of each Party's governing body. If the Parties' governing bodies do not approve of the amendment, they shall remand it back to the Council with

suggestions. Any amendments to this Agreement shall be signed by the Council President and each Party and shall be attached hereto and become a part hereof.

- 5. Disputes.** In the event there are disputes or claims by the Parties related to this Agreement, the Council's actions under this Agreement, or the Council Rules, the following dispute resolution process will be followed. The disputing Parties agree that this process will serve as the sole dispute resolution process regarding such disputes or claims.

The disputing Parties shall address disputes in the below order. Dispute resolution will be documented by mutually-signed memorandum.

- a. File complaint with the Board President describing the matter in detail specifically citing any alleged violations of the IGA.
- b. The President shall inform the Board and the Board shall schedule a meeting to hear the matter. All Board decisions are final.
- c. In the event the dispute is not resolved using the above process, either disputing Party may proceed to mediation. To begin the mediation process, the disputing Parties will each submit three (3) names of potential mediators and shall agree upon a mutually acceptable mediator from the list of names. The costs of mediation shall be borne equally between the disputing Parties.
- d. In the event the dispute is not resolved using the above mediation process, the dispute shall be subject to final and binding arbitration. Arbitration shall be conducted pursuant to the rules of the Arbitration Service of Portland or alternate rules as agreed upon by the Parties and shall be conducted in Gilliam County, Oregon, unless otherwise agreed by the disputing parties.
- e. In the event of any arbitration arising out of or relating to this Agreement or the enforcement thereof, the prevailing disputing Party in such action shall be entitled to recover its reasonable arbitration and attorney fees, costs, and expenses from the non-prevailing disputing Party.
- f. The laws of the State of Oregon shall be applied in the interpretation, execution, and enforcement of this Agreement.

6. General Provisions.

- a. **Complete Agreement.** This Agreement represents the complete and integrated understanding of the Parties with respect to all particulars covered herein. All prior agreements pertaining to the creation of an intergovernmental entity, written and oral are hereby cancelled. No prior written or oral representation, negotiation or statement which conflicts with the terms of this Agreement shall be considered to in any way modify, abridge or invalidate any provision hereof, and no

evidence of such shall be admitted in any proceedings in which the terms and application of this Agreement are at issue.

- b. Severability.** In the event any provision of this Agreement is held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the Parties.
- c. Governing Law.** This Agreement shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in a Circuit Court of the State of Oregon.
- d. Force Majeure.** The Parties shall not hold any other Party or Parties responsible for damages or delay in the performance of this Agreement when caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other Party or Parties' officers, employees or agents.
- e. Debts, Liabilities, Obligations, and Indemnification.** All debts, liabilities and obligations of any of the Parties shall be and shall remain debts, liabilities and obligations of that or those Parties and shall not become debts liabilities and obligations of the other Parties or of the Council. All debts, liabilities and obligations incurred by or on behalf of the Council shall remain debts, liabilities and obligations of the Council. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, O.R.S. 30.260 to 30.300, and the Oregon Constitution, each Party agrees to hold harmless, defend, and indemnify each other, including its officers, agents, and employees, against all claims, demands, actions and suits (including all attorney's fees and costs) arising from the performance of this Agreement where the loss or claim is solely attributable to the purposeful or negligent acts or omissions of that Party.
- f. Liability and Insurance.**

 - i. Liability.** Unless otherwise expressly agreed to in writing, there shall be no joint and several liability of the Parties either in contract or tort, and all obligations of the Board or the Parties shall be several only. Without limiting the foregoing, no Party to this Agreement shall be liable for damages, debts or claims caused solely by the negligent act, omission or other wrongful act by the Board or other Parties hereto. The Party causing damages by its sole negligent act, omission, or wrongful act shall be individually liable.
 - ii. Insurance.** The Parties and the Board shall each individually maintain comprehensive general liability insurance coverage or sufficient self insurance reserves to cover the reasonable risks of damage or loss in the form of personal injury, bodily injury, or property damage for acts or omissions done in the course and scope of this Agreement in at least the coverage amounts for which public entities are liable under Oregon Revised Statutes and the Oregon Constitution, as those laws now exist or as they may be amended. The Board shall name the Parties as additional insureds. Notwithstanding

anything herein to the contrary, the Board may, by majority vote and without amending this Agreement, require additional insurance coverage, limits, and terms. The Board shall secure all necessary and desirable insurance coverages, which shall include Errors and Omissions coverage.

- g. Dissolution.** In the event that the Parties agree to terminate this Agreement (as provided above) and dissolve the Fiber Council, the dissolution motion shall provide an estimated timeline for the dissolution and shall name two Board members (called “Dissolution Managers” in this Agreement) responsible for overseeing the dissolution process. The Dissolution Managers may retain professional assistance as needed and shall take immediate steps to begin to permanently terminate and dissolve the Council. Such dissolution steps shall include but are not limited to the following:
 - i.** Providing written notice to all Parties’ elected officials of the pending dissolution, including the proposed timeline for a final dissolution and the Board’s expected process for ending employment relationships.
 - ii.** Notification to all neighboring governments, all necessary State and federal agencies, and all partners of such dissolution.
 - iii.** Creation of a budget document which shall account for all Council funds, revenues, and assets and all Council debts and financial responsibilities.
 - iv.** Satisfaction of all Council debts and financial responsibilities, including a final financial and accounting of all debts and resources.
 - v.** Any funds or revenues remaining in Council accounts after satisfying all Council debts and financial responsibilities shall be distributed to the Parties in proportion to their funding contributions. Such distribution plan shall be documented in writing and shall be provided to all Parties prior to distribution.
 - vi.** Any personal property, equipment and furnishings not identified for return to a third party or a Party shall be sold in accordance with applicable public contracting and procurement law. After ensuring payment or satisfaction of all Council debts or financial responsibilities, the funds from such sale shall be distributed to the Parties in proportion to their funding contribution to Council. Such distribution plan shall be documented in writing and provided to all Parties prior to distribution.
 - vii.** Any other actions or decisions required to fully dissolve the Council, as determined by the Board’s Dissolution Managers, including specifically, a plan for either maintaining or abandoning the infrastructure.

h. Counterparts. Each Party shall sign a counterpart of the original of this Agreement. The Parties intend that all the signed counterparts taken together will be considered as one original document and given full force and effect as if all Parties had signed one document.

7. No Shared Employees. Employees or volunteers of the Parties shall be at all times employees and/or volunteers of their original employer for the purposes of this Agreement. No employment or business partnerships between the Parties shall be imputedly created by this Agreement. Employees and volunteers remain subject solely to the personnel policies, rules, and regulations of their employer. The intent of this provision is to prevent the creation of any “special employer” relationships under Oregon workers’ compensation law, PERS regulations, or other state or federal laws.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

GILLIAM COUNTY

CITY OF CONDON

Elizabeth Farrar, Gilliam County Judge
Date: October 23, 2019

Jim Hassling, Mayor
Date: 10-15-19

APPENDIX B: INTERGOVERNMENTAL AGREEMENT FOR FIRE SERVICES.**INTERGOVERNMENTAL AGREEMENT FOR FIRE SERVICES**

This Intergovernmental Agreement for Fire Services (this “Agreement”) is dated October 6th, 2021, but made effective for all purposes as of January 1, 2022 (the “Effective Date”), and is entered into between Gilliam County (“County”), a political subdivision of the State of Oregon, North Gilliam County Rural Fire Protection District (“NGRFPD”), an Oregon special district, South Gilliam County Rural Fire Protection District (“SGRFPD”), an Oregon special district, City of Arlington (“Arlington”), an Oregon municipal corporation, and City of Condon (“Condon”), an Oregon municipal corporation.

RECITALS:

A. The Parties entered into a certain Memorandum of Agreement dated May 9, 2001 (the “Original Agreement”) pursuant to which the Parties formed the “Gilliam County Fire Services Board.” The board was formed to facilitate the recruitment, selection, and supervision of a fire services coordinator.

B. The Parties find that continued provision of fire coordination services necessitates the establishment of an intergovernmental entity under O.R.S. Chapter 190. This intergovernmental entity will be a legal entity separate and distinct from the Parties. The intergovernmental entity will be responsible for the recruitment, selection, and supervision of the fire services coordinator and fire service coordination.

C. This Agreement is made pursuant to O.R.S. 190.010, which statute provides that units of local government may enter into agreements for the performance of any functions and activities that any party to the agreement, or its officers or agents, has the authority to perform.

AGREEMENT:

NOW, THEREFORE, in consideration of the Parties’ respective obligations under this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions. Unless defined elsewhere in this Agreement, capitalized terms contained in this agreement have the following meanings assigned to them.

“Agreement” has the meaning assigned to such term in the preamble. “Agency” has the meaning assigned to such term in Section 2.1.

“Arlington” means City of Arlington, an Oregon municipal corporation, whose address is PO Box 68, Arlington, Oregon 97812.

“Board” has the meaning assigned to such term in Section 3.1.

“Budget” has the meaning assigned to such term in Section 5.1.

“Condon” means City of Condon, an Oregon municipal corporation, whose address is PO Box 445, Condon, Oregon 97823.

“Contribution” has the meaning assigned to such term in Section 5.2.

“Contribution Schedule” has the meaning assigned to such term in Section 5.2.

“Coordinator” means the Agency employed Gilliam County Fire Services Coordinator.

“County” means Gilliam County, a political subdivision of the State of Oregon, whose address is PO Box 427, Condon, Oregon 97823.

“Dissolution Manager(s)” has the meaning assigned to such term in Section 7.3.1

“Effective Date” has the meaning assigned to such term in the preamble.

“Fire District(s)” means NGRFPD and SGRFPD, individually and collectively.

“Initial Term” has the meaning assigned to such term in Section 7.1.

“Law(s)” mean all federal, state, and local laws, statutes, ordinances, and/or regulations directly or indirectly affecting this Agreement and/or Agency, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder) and O.R.S. Chapter 190, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

“Law Firm” has the meaning assigned to such term in Section 8.5.

“NGRFPD” means North Gilliam County Rural Fire Protection District, an Oregon special district, whose address is PO Box 476, Arlington, Oregon 97812.

“Original Agreement” has the meaning assigned to such term in Recital A.

“Party” or “Parties” means the parties to this Agreement, individually and collectively.

“Representative(s)” mean the officers, employees, volunteers, and authorized representatives of the identified person or Party.

“Services” has the meaning assigned to such term in Section 4.2.2.

“SGRFPD” means South Gilliam County Rural Fire Protection District, an Oregon special district, whose address is PO Box 623, Condon, Oregon 97823.

2. Gilliam County Fire Services Agency.

2.1 Formation; Responsibility. The Parties hereby create the Gilliam County Fire Services Agency (“Agency”), an intergovernmental entity created pursuant to O.R.S. Chapter 190. Agency will have responsibility and authority to (a) coordinate the provision of emergency fire services to Gilliam County citizens (including functions related thereto), and (b) subject to the terms of this Agreement and/or O.R.S. Chapter 190, perform such other responsibilities as may be assigned by the Parties from time to time. Without otherwise limiting the generality of the immediately preceding sentence, and subject to the Laws, Agency will have the following general powers: (y) adopt, through action of the Board, such bylaws, rules, regulations, standards, and/or policies necessary to carry out the purposes of Agency and/or this Agreement; and (z) perform and exercise all powers pursuant to the Laws, including, without limitation, the principal acts of the Parties and O.R.S. Chapter 190, which are necessary and/or appropriate to perform (or cause to be performed) the Services.

2.2 Purpose. Agency’s purposes include, without limitation, the following: (a) review, evaluate, and address fire service delivery challenges in a cost-effective manner by providing technical assistance to Gilliam County citizens and each Fire District; (b) assist and support each Fire District’s provision of fire emergency services to Gilliam County citizens; (c) recruit, select, and employ the Coordinator; (d) provide a forum for communication and consultation among the Parties; and (e) carry out such other responsibilities and functions as determined necessary or appropriate by the Board.

2.3 Party Responsibilities. In addition to all other Party responsibilities contained in this Agreement, including, without limitation, the cost-sharing obligations described in Section 5, each Party will (a) require that each Party’s Board member provide the Party’s respective governing body with regular updates regarding the Agency’s activities and the Services, and (b) host any required Board and/or community meetings from time to time.

3. Board of Directors.

3.1 Membership. Agency will be governed by a board of directors consisting of five members (the “Board”). The governing body of each Party will appoint one of its elected officials to serve as a Board member. The appointed member will represent his or her appointing Party. If a vacancy occurs on the Board, the vacancy will be filled by the governing body of the Party that appointed the departed Board member. Each fiscal year the Board will elect a chairperson and vice-chairperson from its membership, each of whom will serve a one-year term; provided, however, no member will serve more than one year as chairperson in any four-year period. The chairperson will preside at all meetings of the Board and perform such other duties prescribed by the Board from time to time.

3.2 Meetings. A majority of the then-appointed Board members will constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes. Except

as this Agreement and/or applicable Law requires otherwise, the express concurrence (approval) of a quorum is necessary to decide any question before the Board. Each Board member will be entitled to vote on all Board decisions, subject to applicable Laws. Regular meetings of the Board will be held no less than twice per fiscal year on such day(s), time(s), and place(s) determined by the Board. Subject to applicable Law, special meetings (with at least five days' prior notice) and emergency meetings may be called by the chairperson or two or more Board members. All Board meetings are subject to Oregon's Public Meetings Law, O.R.S. 192.610-O.R.S. 192.690, as amended. Unless otherwise provided, *Robert's Revised Rules of Order* will govern all procedural matters.

3.3 Authority. Subject to any limitations set forth in this Agreement and/or O.R.S. Chapter 190, the Board will have the authority and responsibilities set forth in this Agreement, including, without limitation, the following:

3.3.1 The Board will have the general authority to perform the following: (a) oversee and have full responsibility for all matters pertaining to Agency's operations; (b) review and approve Agency's budget pursuant to applicable Law, including, without limitation, O.R.S. 294.900 - O.R.S. 294.930 (to the extent applicable); (c) approve capital purchase requests if not previously approved in the Budget; (d) review performance relative to the implementation of Agency's policies and the Budget; and/or (e) carry out such other activities as are necessary, required, and/or implied to accomplish Agency's purposes, this Agreement, and/or as provided in O.R.S. Chapter 190.

3.3.2 Without otherwise limiting the generality of Section 3.3.1, the Board will (a) assist in the recruitment and selection of the Coordinator; (b) establish a job description, salary, and budget for the Coordinator; (c) receive and review reports from the Coordinator concerning the provision of fire services in Gilliam County; and (d) prepare and provide each Party with a monthly financial report consisting of an accounting of Agency funds. Notwithstanding anything contained in this Agreement to the contrary, the Board will not have the authority to perform the following: (x) commit the taxing authority or general funds of any Party's governing body; (y) impose ad valorem property taxes; and/or (z) expend (or cause the expenditure of) funds in excess of (or inconsistent with) the Budget.

4. Coordinator; Fire Service.

4.1 Responsibilities; Costs. Subject to the terms and conditions contained in this Agreement, Agency will be responsible for, and is hereby empowered to take, all actions necessary and/or appropriate to support Agency's operations and its affairs in accordance with this Agreement and all Board policies. Without otherwise limiting the generality of the immediately preceding sentence, Agency will provide and/or perform the following: (a) employ and terminate the Coordinator subject to and in accordance with Agency's policies and procedures; (b) enter into contracts subject to and in accordance with this Agreement, the Laws, and all Board policies (including, without limitation, all applicable public contracting rules and procedures); and (c) carry out such other necessary and/or appropriate responsibilities and functions that the Board may impose from time to time.

4.2 Coordinator.

4.2.1 Agency will employ the Coordinator. Agency will pay all compensation, benefits, taxes, costs, and expenses arising out of or resulting from Agency's employment of the Coordinator, including, without limitation, vacation, sick leave, holidays, social security, unemployment benefits, contributions to any applicable employee retirement programs, workers' compensation insurance, medical insurance, dental insurance, and life and disability insurance (all to the extent applicable).

4.2.2 The Coordinator will report to the Board and be subject to the general direction and control of the Board. Subject to the terms and conditions contained in this Agreement, the Coordinator will perform those fire coordinator services set forth in the attached Schedule 4.2.2 (the "Services"). The Coordinator will (a) consult with and advise the Board on all matters concerning the Services reasonably requested by the Board, (b) communicate all matters and information concerning the Services to the Board and perform the Services under the general direction of the Board, (c) devote such time and attention to performance of the Services as is necessary or appropriate, and (d) perform the Services to the best of the Coordinator's ability in accordance with this Agreement and the Coordinator's letter of employment with Agency.

4.2.3 Subject to the terms and conditions contained in this Agreement, Agency is responsible for all personnel matters concerning the Coordinator, including, without limitation, compensation, benefits, standards of service, discipline, performance of duties, working hours, termination, and employment. The Coordinator will not be entitled to any wages and/or benefits which accrue to employees of the Parties, including, without limitation, unemployment benefits, contributions to the Public Employees Retirement System, workers' compensation insurance, medical insurance, dental insurance, and life and disability insurance. Agency employees (including, without limitation, the Coordinator) are not employees of the Parties.

4.3 Equipment. Agency's initial office space(s), equipment, and furnishings are located at the offices of each Fire District (in Condon and Arlington) and generally consist of office equipment and furniture.

5. Budget; Contributions; Accounting.

5.1 Operating Budget. In accordance with and subject to the Laws, including, without limitation, applicable Oregon Local Budget Law provisions, Agency may make expenditures for the acquisition, purchase, and/or lease of materials, services, supplies, facilities, personnel, and/or equipment as may be necessary or appropriate to carry out the purposes of Agency and/or this Agreement. Expenditures will not exceed funds appropriated for the specific purposes and will be made in accordance with applicable Law. The Coordinator will prepare, develop, and recommend Agency's annual operating budget (the "Budget") for the Board's review and approval. Agency will adhere to the fiscal year budget preparation cycle and will endeavor to adopt its annual budget in May or June each year. The budget period will be on a fiscal year basis beginning on July 1 each year and ending on the immediately following June 30.

5.2 Contributions. Subject to the terms and conditions contained in this Agreement, Agency's activities, including, without limitation, employment of the Coordinator, will be funded through the cost sharing formula/parties' annual contributions (each a "Contribution") identified in the Contribution Schedule attached hereto as Schedule 5.2 (the "Contribution Schedule"). The Contribution Schedule will be reviewed by the Board no less than annually and will be based on the then-applicable Budget. The Parties may increase or decrease the total Contribution amount from time to time if and when the Board determines necessary or appropriate. Any increase in the total Contribution amount will be proportionally borne by all Parties consistent with the Contribution percentages identified in the Contribution Schedule.

5.3 Payment; Agency Funds. Each Party will timely pay its Contribution amount based on the then-applicable Contribution Schedule. In September each year, Agency will invoice each Party for the Party's Contribution amount. Each Party will pay the amount due under each invoice within thirty (30) days after the Party's receipt of the invoice. Agency will maintain one or more bank accounts dedicated to the purpose of recording financial transactions specific to Agency activities. Funds contributed in accordance with Section 5.2 will be maintained in Agency accounts. Agency funds will not be commingled with any Party funds (and will be maintained in accounts separate from any Party accounts).

5.4 Accounting. In September each year, Agency will complete an accounting of Agency expenditures during the immediately preceding fiscal year. If Agency's accounting determines that the Contributions identified in Contribution Schedule were insufficient to cover Agency's expenditures during the immediately preceding fiscal year, each Party will pay the unpaid balance (on a proportionate basis consistent with the Party's percentage identified in the Contribution Schedule) within thirty (30) days after the Party's receipt of notice from Agency.

6. Insurance; Indemnification; Relationship.

6.1 Agency Insurance. Agency will obtain and maintain adequate insurance to cover Agency's operations. Without otherwise limiting the generality of the immediately preceding sentence, Agency will obtain and maintain, in addition to all other insurance required under this Agreement, the following minimum levels of insurance: (a) general liability insurance for all losses or claims arising out of or related to Agency's operations (including, without limitation, damages as a result of death or injury to any person or destruction or damage to any property) with limits of no less than \$1,000,000.00 per occurrence, \$2,000,000.00 in the aggregate; (b) employer liability insurance with limits of no less than \$500,000.00 per occurrence and in the aggregate; and (c) workers' compensation insurance in form and amount sufficient to satisfy the requirements of applicable Oregon law (the workers' compensation insurance policy will contain a waiver of subrogation in favor of each Party). Each liability insurance policy required under this Agreement will be in form and content satisfactory to the Board, will list each Party (and each Party's Representatives) as additional insured(s), and will contain a severability of interest clause. Notwithstanding anything in this Agreement to the contrary, the Board may increase the minimum levels of insurance Agency is required to carry under this Agreement so that Agency's insurance at least equals the applicable limits of liability identified under the Oregon Tort Claims Act (O.R.S. 30.260-O.R.S. 30.300).

6.2 Agency Indemnification. To the fullest extent permitted under applicable law, Agency will defend, indemnify, and hold the Parties and their respective Representatives harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of Agency's operations.

6.3 Party Indemnification. To the fullest extent permitted under applicable law, each Party will defend, indemnify, and hold Agency and the other Parties (and their respective Representatives) harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of the Party's breach and/or failure to perform the Party's obligations contained in this Agreement. Each Party will retain all immunities and privileges granted by the Oregon Tort Claims Act (O.R.S. 30.260-O.R.S. 30.300) and all other statutory rights granted because of the Party's status as a public body or agency.

6.4 Relationship. Each Party is an independent contractor of the other Parties. This Agreement does not create a joint venture and/or agency relationship between the Parties. No Party has the authority to bind the other Party or represent to any person that a Party is an agent of the other Party. No Party will provide any benefits to any other Party; each Party will be solely responsible for obtaining the Party's own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans. Notwithstanding anything contained in this Agreement to the contrary, Agency (or the Board) will not have the authority to bind and/or encumber a Party in any manner except as the Party agrees through both the policy and administrative authority granted to the Party's appointed Board member.

7. Term; Termination.

7.1 Term. Subject to the terms and conditions contained in this Agreement, the term of this Agreement commenced on the Effective Date and will remain in full force and effect until June 30, 2025 (the "Initial Term"), unless sooner terminated as provided in this Agreement. Upon expiration of the Initial Term, this Agreement will automatically renew for one or more term(s) of one year each, unless sooner terminated in accordance with this Agreement. Commencing on or about July 1, 2023 and continuing on or about the same day each year thereafter during the term of this Agreement, the Parties will review this Agreement to determine whether any changes and/or modifications to this Agreement are necessary or appropriate. Any changes and/or modifications to this Agreement require the Parties' written agreement. Notwithstanding anything contained in this Agreement to the contrary, the Parties may terminate this Agreement by the Parties' written agreement.

7.2 Voluntary Withdrawal by a Party. Any Party may elect to terminate its participation in this Agreement (and the Agency) by providing six months' prior written notice to the chairperson, each member of the Board, and the governing body of each Party. Withdrawal will be effective at 11:59 PM of the June 30 that is no less than six months after the date of such notice. The withdrawing Party will continue to pay its share of, and/or be responsible for, its Contribution amounts and will defend, indemnify, and hold Agency and the remaining Parties harmless for, from, and against those

financial responsibilities and obligations attributable to the withdrawing Party and/or accruing prior to the effective date of the withdrawing Party's withdrawal. Termination of this Agreement does not relieve any Party from its obligations incurred prior to the effective date of termination.

7.3 Dissolution.

7.3.1 If all then-parties to this Agreement agree to terminate this Agreement and dissolve Agency, the dissolution motion will provide an estimated timeline for the dissolution and will name two Board members (the "Dissolution Manager(s)") responsible for overseeing the dissolution process. The Dissolution Managers may retain professional assistance as needed and will take immediate steps to permanently terminate and dissolve Agency. These dissolution steps may include, without limitation, the following:

7.3.1.1 Providing written notice of Agency's dissolution to the elected officials of each Party. This notice will include the proposed timeline for the dissolution and such other information the Dissolution Managers determined necessary or appropriate.

7.3.1.2 Notification of Agency's dissolution to all neighboring agencies, all necessary state and federal agencies, and all partners.

7.3.1.3 Preparation of a budget document accounting for all Agency funds, revenues, assets, and liabilities.

7.3.1.4 Payment of all Agency debts and other financial responsibilities, including a final accounting of all debts and resources.

7.3.1.5 Payment and/or performance of those dissolution related tasks or responsibilities identified under Section 7.4.

7.4 Liquidation. Upon Agency's dissolution, each Party on the date of dissolution will be responsible for its Contribution amount through the date of dissolution. Upon dissolution and subject to applicable law, (a) Agency's cash, if any, will be distributed to each Party in proportion to each Party's Contribution percentage, (b) all remaining Agency assets will be distributed in the manner agreed upon by the Parties, which may include, without limitation, the sale of Agency's facilities and equipment, and (c) Agency personnel and employees will be transferred or terminated subject to and in accordance with applicable Oregon law.

8. Miscellaneous.

8.1 Coordination; Assignment; Binding Effect. The Parties will maintain adequate levels of communication to ensure maximum cooperation and coordination between the Parties. No Party may assign any of the Party's rights and/or obligations under this Agreement to any person without the prior written consent of all other Parties. Subject to the immediately preceding sentence, this Agreement will be binding on the Parties and their respective administrators, successors, and

permitted assigns and will inure to their benefit. The Parties will execute all documents or instruments and will perform all lawful acts necessary or appropriate to carry out the intent of this Agreement. All exhibits, schedules, instruments, and other documents referenced in this Agreement are part of this Agreement. Subject to the Laws, including, without limitation, O.R.S. Chapter 190, the Board may authorize a new party to join Agency only if approved by the unanimous vote of the Board. The addition of an additional party may be accomplished by the new party taking the actions necessary under O.R.S. Chapter 190 and signing a copy of this Agreement, as amended, after approval of the additional member by the Board.

8.2 Notices; Severability; Remedies. Any notice will be deemed given when personally delivered or delivered by facsimile or email transmission (with electronic confirmation of delivery), or will be deemed given three days following delivery of the notice by U.S. mail, certified, return receipt requested, postage prepaid, by the applicable Party to the address shown in this agreement (or any other address that a Party may designate by notice to the other parties), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed delivered on the next following business day. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. Subject to the terms and conditions contained in this Agreement, each Party will pay all wages and benefits due the Party's personnel, including, without limitation, overtime, workers' compensation, and death benefits. If a Party breaches and/or otherwise fails to perform any of the Party's representations, warranties, covenants, and/or obligations under this Agreement, the non-defaulting Parties may, in addition to any other remedy provided to the non-defaulting Parties under this Agreement, pursue all remedies available to the non-defaulting Parties at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

8.3 Waiver; Entire Agreement; Amendment; Counterparts. Notwithstanding anything contained in this Agreement to the contrary, no provision of this Agreement may be modified, waived, and/or discharged unless such waiver, modification, and/or discharge is agreed to in writing by the Parties. No waiver by a Party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between Parties with respect to the subject matter of this Agreement and contains all the terms and conditions of the Parties' agreement and supersedes any other oral or written negotiations, discussions, representations, and/or agreements, including, without limitation, the Original Agreement. No addition, modification, amendment, or alteration to this Agreement will be effective against the Parties unless specifically agreed upon in writing and signed by the Parties. This Agreement may be signed in one or more counterparts.

8.4 Applicable Law; Venue; Attorney Fees. This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. Any action or proceeding arising out of this Agreement will be litigated in courts located in Gilliam County, Oregon. Each Party consents and submits to the jurisdiction of any local, state, or federal court located in Gilliam County, Oregon. With respect to any dispute relating to this Agreement, or if a suit, action, arbitration, or other

proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing Party will be entitled to recover from the losing Party(ies) its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

8.5 Legal Representation; Original Agreement. The law firm of Bryant, Lovlien & Jarvis, P.C. ("Law Firm") has been employed by County to prepare this Agreement. Law Firm represents only County in the negotiation and preparation of this Agreement. The Parties have thoroughly reviewed this Agreement with their own legal counsel or have knowingly waived their right to do so. The Original Agreement is terminated and deemed null and void and of no further force and effect as of the Effective Date; provided, however, the Parties are not released from (and remain obligated for) any liabilities and/or obligations that have arisen out of or under the Original Agreement prior to the Effective Date. This Agreement will not be construed as an actual or implied waiver and/or release of any Party's obligations and/or liabilities arising out of or under the Original Agreement.

8.6 Person; Interpretation; Signatures. For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes/ and "including" are not limiting.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be binding and effective for all purposes as of the Effective Date.

CONDON:
City of Condon,
an Oregon municipal corporation

By: _____
Its: _____

Dated: _____

ARLINGTON:
City of Arlington,
an Oregon municipal corporation

By: _____
Its: _____

Dated: _____

SGRFPD:

South Gilliam County Rural Fire
Protection District,
an Oregon special district

By: _____

Its: _____

Dated: _____

COUNTY:

County of Gilliam,
a political subdivision of the State of Oregon

Elizabeth Farrar, Gilliam County Judge

Dated: _____

NGRFPD:

North Gilliam County Rural Fire
Protection District,
an Oregon special district

By: _____

Its: _____

Dated: _____

CHAPTER 32: FINANCES

Section

Purchasing Procedure

- 32.01 Title
- 32.02 Definitions
- 32.03 Purchasing agents; powers and duties
- 32.04 Competitive bidding required
- 32.05 Disposal of surplus property

Public Contracting

- 32.20 City policy
- 32.21 Application of regulations
- 32.22 Regulation by the city
- 32.23 Model Rules
- 32.24 Designation of solicitation agents
- 32.25 Definitions
- 32.26 Process for approval of special solicitation methods and exemptions
- 32.27 Solicitation methods for classes of contracts
- 32.28 Informal solicitation procedures
- 32.29 Use of brand name specifications for public improvements
- 32.30 Bid, performance, and payment bonds
- 32.31 Electronic advertisement of public improvement contracts
- 32.32 Appeal of debarment or prequalification decision

PURCHASING PROCEDURE

§ 32.01 TITLE.

This subchapter shall be known and may be cited as the “Purchasing Ordinance of the City.”
(Prior Code, § 32.01)

§ 32.02 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY COUNCIL. The City Council of the City of Condon.

PURCHASING AGENT. The City Council or any person appointed by the City Council as its assistant to exercise the functions of purchasing agent in the manner prescribed by this subchapter.

SERVICE. Includes:

- (1) All telephone, gas, water, electric light, and power service; insurance; leases for all ground, buildings, offices, or other space required by the city; and
- (2) The rental, repair, or maintenance of equipment, machinery, and other personal property.

SHALL. The act is directory, not mandatory.

SUPPLIES. All supplies, materials, and equipment.
(Prior Code, § 32.02)

§ 32.03 PURCHASING AGENTS; POWERS AND DUTIES.

The purchasing agents shall have the power and it shall be their duty to:

- (A) Purchase or contract for all supplies and contractual services needed by the city;
- (B) Make, without further authorization, all expenditures reasonably necessary for the orderly, uniform operation of the city as long as the same are within the budget allowances allotted for said operations for the fiscal year in which the expenditures are made;
- (C) Make, without further authorization but within budget provisions, such expenditures as are reasonably necessary for goods, wares, merchandise, services, or in payment of obligations ordinarily and reasonably needed or incurred by cities in the state of comparable size and engaging in like pursuits as this city together with authority to make all expenditures incidentally and reasonably needed in connection therewith; and
- (D) Sell or dispose of all personal property which has become obsolete and unusable.
(Prior Code, § 32.03)

§ 32.04 COMPETITIVE BIDDING REQUIRED.*(A) Findings.*

(1) *Operational, budget, and financial data.* The formal competitive bidding process costs between \$2,000 and \$7,000 to conduct and adds significant additional time delays, and the City Council finds that applying the formal process to public improvement contracts that do not exceed \$75,000 is not cost effective and can discourage smaller companies from submitting formal bids, thereby reducing competition.

(2) *Public benefits.* Exempting contracts that do not exceed \$150,000 will save public funds and enable greater competition.

(3) *Value engineering, specialized expertise required, technical expertise, and funding sources.* These considerations are irrelevant to this particular class exemption.

(4) *Public safety.* Exempting contracts that do not exceed \$150,000 will enable the city to more quickly correct minor safety hazards.

(5) *Market conditions.* Increases in construction, materials, and service costs require an increase in the threshold for competitive bidding.

(6) *Exemptions.* Any exemptions from competitive bidding requirements allowed under the following rules will not encourage favoritism in the awarding of public contracts nor substantially diminish competition for public contracts because such exemptions still require alternative contracting procedures which ensure:

- (a) Reasonable competition;
- (b) The best contract price for the public; and
- (c) A cost-effective process for contractors.

(7) *Awarding of public contracts.* The awarding of public contracts pursuant to any such exemption will result in substantial cost savings to the public contracting agency because the City Council will avoid costs associated with unnecessary documentation and procedures where it is unmerited by the relatively low cost of the project.

(8) *Reliance on findings.* Such exemptions that have been adopted by the state's Department of Administrative Services (DAS) and the City Council, pursuant to its authority, rely on the DAS analysis and findings.

(B) Adoption of rules of operation. In lieu of the Attorney General's Model Rules, O.A.R. Chapter 37, the city hereby prescribes the Rules of Operation for the city's Public Contract Review Board set forth in §§ 32.20 through 32.32. All future exemptions and new rules, except for public improvement

contract exemptions, shall be adopted after a public hearing of the Public Contract Review Board. The subject matter of the exemption or new rules and hearing information including date, time, and place of the hearing shall be published in a newspaper of general circulation not less than three nor more than 15 days prior to the date of the public hearing. Additionally, a notice of the hearing shall be posted on the main entry door of the building where the meeting will be held not later than three days prior to the date of the meeting. Public improvement contract exception procedures, including notice and public hearing requirements, shall be in accordance with state law. Except as otherwise prescribed by state law, procedures for the screening and selection of persons to perform personal services shall be determined by the Public Contract Review Board each time the city requires such services in order to meet the city's particular contracting needs. Whenever the city is selecting engineers, architects, or land surveyors for a project funded by a grant or loan from the state or monies from the State Highway Fund under O.R.S. 366.762 or 366.800 and the total amount of any grants, loans, or monies from the State Highway Fund and from the state for the project exceeds 35% of the value of the project and value of the projects exceeds \$400,000, the applicable provisions of the Attorney General's Model Rules, O.A.R. Chapter 137, will govern the process.

(Prior Code, § 32.04) (Ord. 04-04, passed 2-4-2004)

Statutory reference:

Related provisions, see O.R.S. 366.525 and 366.800

§ 32.05 DISPOSAL OF SURPLUS PROPERTY.

The purchasing agent shall have the authority to dispose of surplus personal property by any means he or she determines to be in the best interest of the city. Such methods may include, but are not limited to, sale, trade, transfer, auction, or destruction.

(Prior Code, § 32.05)

PUBLIC CONTRACTING

§ 32.20 CITY POLICY.

(A) *Short title.* The provisions of this subchapter and all rules adopted under this subchapter may be cited as the "City of Condon Public Contracting Regulations."

(B) *Purpose of public contracting regulations.* It is the policy of the city 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 as they emerge within various industries.

(C) *Interpretation of public contracting rules.* In furtherance of the purpose of the objectives set forth in division (B) above, it is the City Council's intent that city's Contracting Regulations be interpreted to authorize the full use of all contracting powers and authorities described in O.R.S. Chapters 279A, 279B, and 279C.

(Res. 2019-05, passed 12-5-2018)

§ 32.21 APPLICATION OF REGULATIONS.

In accordance with O.R.S. 279A.025, city's public contracting regulations and the State Public Contracting Code do not apply to the following classes of contracts:

(A) *Between governments.* Contracts between the city and a public body or agency of the state or its political subdivisions, or between the city and an agency of the federal government;

(B) *Grants.* A grant contract is an agreement under which the city 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 State Public Contracting Code; however, any grant made by the city 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 State 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 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) *State corrections enterprises.* Procurements from a state corrections enterprises program;

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

(1) The incurring of debt by the city, including any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements, or other documents established are general, special, or limited;

(2) The making of program loans and similar extensions or advances of funds, aid, or assistance by the city 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 as authorized by law; or

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

(H) *Employee benefits.* Contracts for employee benefit plans as provided in O.R.S. 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303, and 243.565;

(I) *Exempt under state laws.* Any other public contracting specifically exempted from the State Public Contracting Code by another provision of law; and

(J) *Federal law.* Except as otherwise expressly provided in O.R.S. 279C.800 to 279C.870, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of the State Public Contracting Code or these regulations, or require additional conditions in public contracts not authorized by the State Public Contracting Code or these regulations.

(Res. 2019-05, passed 12-5-2018)

§ 32.22 REGULATION BY THE CITY.

Except as expressly delegated under these regulations, the 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 O.R.S. 279A.065, O.R.S. 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 any of the duties or authority of a contracting agency; and

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

(Res. 2019-05, passed 12-5-2018)

§ 32.23 MODEL RULES.

The Model Rules adopted by the Attorney General under O.R.S. 279A.065 (Model Rules) are hereby adopted as the public contracting rules for the city, to the extent that the Model Rules do not conflict with the provisions of this subchapter, including any amendments to this subchapter.

(Res. 2019-05, passed 12-5-2018)

§ 32.24 DESIGNATION OF SOLICITATION AGENTS.

The following officials of the city are designated as the solicitation agents for the following classes of contracts unless superseded by a specific designation by the City Council:

(A) Design and construction of public improvements _____;

(B) Personal services contracts, other than for design of public improvements: administrative officer; and

(C) Procurement and disposal of goods and services: administrative officer.

(Res. 2019-05, passed 12-5-2018)

§ 32.25 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AWARD. 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 until the contract is executed and delivered by the city.

BID. A binding, sealed, written offer to provide goods, services, or public improvements for a specified price or prices.

CONCESSION AGREEMENT. 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, and under which the concessionaire makes payments to the city 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. 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.** The City of Condon City Council.

COOPERATIVE PROCUREMENT. A procurement conducted by or on behalf of one or more contracting agencies.

DEBARMENT. A declaration by City Council under O.R.S. 279B.130 or O.R.S. 279C.440 that prohibits a potential contractor from competing for the city's public contracts for a prescribed period of time.

DISPOSAL. Any arrangement for the transfer of property by the city under which the city relinquishes ownership.

EMERGENCY. 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. 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. 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. 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. A solicitation made in accordance with the city'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. A publicly advertised request for competitive sealed bids.

MODEL RULES. The public contracting rules adopted by the Attorney General under O.R.S. 279A.065.

OFFEROR. A person who submits a bid, quote, or proposal to enter into a public contract with the city.

PERSON. A natural or any other private or governmental entity, having the legal capacity to enter into a binding contract.

PERSONAL SERVICES CONTRACT. 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 Council shall have discretion to determine whether additional types of services not specifically mentioned in this definition fit within the definition of **PERSONAL SERVICES**.

PROPOSAL. 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.

PUBLIC CONTRACT. A sale or other disposal, or a purchase, lease, rental, or other acquisition, by the city 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. A project for construction, reconstruction, or major renovation on real property by or for the city. **PUBLIC IMPROVEMENT** does not include:

- (1) Projects for which no funds of the city 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. 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. A price offer made in response to an informal or qualified pool solicitation to provide goods, services, or public improvements.

REQUEST FOR PROPOSALS. A publicly advertised request for sealed competitive proposals.

SERVICES. Includes all types of services (including construction labor) other than personal services.

SOLICITATION. An invitation to one or more potential contractors to submit a bid, proposal, quote, statement of qualifications, or letter of interest to the city with respect to a proposed project, procurement or other contracting opportunity. The word **SOLICITATION** also refers to the process by which the city requests, receives, and evaluates potential contractors and awards public contracts.

SOLICITATION AGENT. With respect to a particular solicitation or contract, the city employee charged with responsibility for conducting the solicitation and making an award, or making a recommendation on award to the City Council.

SOLICITATION DOCUMENTS. All informational materials issued by the city 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. 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 definition;

(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 definition that the bidder is not responsible under this definition;

(4) Qualified legally to contract with the city;

(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, 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.

STATE PUBLIC CONTRACTING CODE. O.R.S. Chapters 279A, 279B, and 279C.

SURPLUS PROPERTY. Personal property owned by the city which is no longer needed for use by the department to which such property has been assigned.
(Res. 2019-05, passed 12-5-2018)

§ 32.26 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 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.

(B) *Basis for approval.*

(1) The approval of a special solicitation method or exemption from competition must be based upon a record before the City Council that contains the following:

(a) The nature of the contract or class of contracts for which the special solicitation or exemption is requested;

(b) The estimated contract price or cost of the project, if relevant;

(c) 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;

(d) 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;

(e) A description of the proposed alternative contracting methods to be employed; and

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

(2) In making a determination regarding a special selection method, the 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 shall approve the special solicitation or exemption after a public hearing before the City Council following notice by publication in at least one newspaper of general circulation in the city area.

(2) At the public hearing, the city shall offer an opportunity for any interested party to appear and present comment.

(3) The City Council will consider the findings and may approve the exemption as proposed or as modified by the 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 the city'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; provided, that the closing of the solicitation may not be earlier than five days after the date of the hearing at which the City Council approves the exemption. If the 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.

(Res. 2019-05, passed 12-5-2018)

§ 32.27 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 Council.

(A) *Purchases from nonprofit agencies for disabled individuals.* The city shall give a preference to goods, services, and public improvements available from qualified nonprofit agencies for disabled individuals in accordance with the provisions of O.R.S. 279.835 through 279.850.

(B) *Public improvement contracts.*

(1) *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.

(2) *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.* The city 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) The city's contribution to the project may not exceed 25% of the total cost of the project.

(b) The city 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 Council to protect the city against defective performance and claims for payment.

(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 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 this subchapter, personal services contracts may be awarded in the same manner as contracts for services under O.R.S. 279B.050 and 279B.060 to 279B.085.

(1) *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) *Seventy-five thousand dollar award from qualified 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'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.

(1) *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 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.

(2) *Energy savings performance contracts.* Unless the contract qualifies for award under another classification in this section, contractors for energy savings performance contracts shall be selected under a request for proposals in accordance with the city's Public Contracting Regulations.

(E) *Contracts for goods and services.*

(1) *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's needs, including by direct appointment or purchase. Except where otherwise provided, the solicitation agent shall make a record of the method of award:

- (1) *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 O.R.S. 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;
- (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 the city for resale to consumers;
- (12) *Sponsor agreements.* Sponsorship agreements, under which the city 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 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 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's use of property and the public interest; and

(c) The city reserves the right to terminate the contract without penalty, in the event the city 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's needs and can be purchased for a lower cost than substantially similar 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. The City Council shall record the findings that support the purchase; and

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

(G) *Contracts required by emergency circumstances.*

(1) *In general.* When an official with authority to enter into a contract on behalf of the city 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 Council's approval, but, where time permits, the official shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.

(2) *Reporting.* An official who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances:

(a) 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 and the public; and

(b) Notify the 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 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 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 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 division (H).

(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 Council. The solicitation agent shall provide the City Council with a copy of the letter, memorandum, or other documentation from GSA establishing permission to the city 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.

(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. This division (H)(4) 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 State 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. Factors that may be considered by the solicitation agent include costs of sale, administrative costs, and public benefits to the city. 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; and

(g) *Donation*. By donation to any organization operating within or providing a service to residents of the city which is recognized by the Internal Revenue Service as an organization described in § 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 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 shall make, execute, and deliver, a bill of sale signed on behalf of the city, 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*.

(1) *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 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 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 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.

(Res. 2019-05, passed 12-5-2018)

§ 32.28 INFORMAL SOLICITATION PROCEDURES.

The city 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.

(1) *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.

(2) *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, 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.*

(1) *General.* To create a qualified pool, the City Council may invite prospective contractors to submit their qualifications to the city 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.

(2) *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 the city's main office and on its website.

(3) *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.

(4) *Contract.* The operation of each qualified pool may be governed by the provisions of a pool contract to which the city and all pool participants are parties. The contract shall contain all terms required by the city, 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 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 contract.

(5) *Use of qualified pools.* Subject to the provisions of these regulations concerning methods of solicitation for classes of contracts, the 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 Council determines that the best interests of the city 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 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 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 Council in the manner described in § 32.32.

(Res. 2019-05, passed 12-5-2018)

§ 32.29 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;

(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;

(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 Board of Councilors.* The 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 division (A) above.

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

(Res. 2019-05, passed 12-5-2018)

§ 32.30 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'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 and any public agency that is providing funding for the project for which the contract was awarded.

(3) *Cash-in-lieu.* The 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.*

(1) *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 O.R.S. 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 division (A) above upon execution of an amendment establishing the guaranteed maximum price. The 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 the state. The bonds may not constitute the surety obligation of an individual or individuals. The performance and payment bonds must be payable to city 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 Council.

(H) *Emergencies.* In cases of emergency, or when the interest or property of the city probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient performance bond 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 § 32.27(G), unless the City Council requires otherwise.

(Res. 2019-05, passed 12-5-2018)

§ 32.31 ELECTRONIC ADVERTISEMENT OF PUBLIC IMPROVEMENT CONTRACTS.

In lieu of publication in a newspaper of general circulation in the city's newspapers of record, the advertisement for an invitation to bid or request for proposals may be published electronically by posting on the city'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.

(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's metropolitan area and will provide costs savings for the city, or that the use of electronic publication will be more effective than publication in a newspaper of general circulation in city's metropolitan area in encouraging meaningful competition.

(Res. 2019-05, passed 12-5-2018)

§ 32.32 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 Council, as provided in this section.

(B) *Filing of appeal.* The person must file a written notice of appeal with the City Council within three 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 Council shall notify the appellant of the time and place of the hearing.

(2) The City Council shall conduct the hearing and decide the appeal within 30 days after receiving notice of the appeal.

(3) At the hearing, the 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 Council shall set forth in writing the reasons for the decision.

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

(F) *Judicial review.* The decision of the City Council may be reviewed only upon a petition in the circuit court of the city filed within 15 days after the date of the City Council's decision.
(Res. 2019-05, passed 12-5-2018)